

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 October 2020
- b. **Date Received:** 29 October 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, they made a mistake and was chaptered out but would like to rejoin. They are currently working for the U.S. Army as a contractor but desire more to serve.

c. **Board Type and Decision:** In a records review conducted on 10 April 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's PTSD and TBI outweighing the basis for separation - assaulted two noncommissioned officers. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable. No change to the corresponding separation code and reentry code.

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:** 19 March 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** Assaulted two noncommissioned officers.

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

(4) **Legal Consultation Date:** 13 February 2020

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 27 December 2017 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 27 / High School Diploma / 91

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10 Infantryman / 2 years, 2 months, 23 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 27 December 2017, the applicant enlisted in the Regular Army for 3 years and 16 weeks as a PV2. The Enlisted Record Brief provides they promoted to PFC on 27 December 2018. On 1 October and 5 November 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA) and punishment phase (HA).

(2) On 19 August 2019, the applicant was counseled by their platoon sergeant (SFC), for having been drunk on duty, with a .139 blood alcohol content (BAC) on 16 August, and for assaulting two noncommissioned officers. The applicant agreed to both and did not provide any remarks on their behalf.

(3) Although missing from the record, on 5 November 2019, the applicant accepted nonjudicial punishment and as a result, was demoted to PV2.

(4) On 1 October 2019, the applicant completed their medical assessment for their separation at Mendoza Soldier Family Care Center (SFCC), Ft. Bliss, TX, indicating the following answers:

- 10: Worse; broken bone and sickness
- 11: Yes; knee, wrist, sick, dental, vision
- 12: Yes, right knee MRI, dental, vision, wrist
- 13: Yes, right ring finger on rear d
- 15: Yes, right knee and right wrist
- 16: Missing teeth, hard to eat, have implants in waiting to see the doctor
- 17: Yes, need to get seen for sleep problems, having an MRI for TBI, and high problems of being in public since been in 1-77 3/1
- 18: Yes, to check [their] VA and seen more help if chaptered out

(b) Block 20, the health care provider's comments are as follows:

- 10: noted, right wrist scaphoid fx with malunion ORIF with autograft on 5 November 2018. Has been followed by ortho-hand and occupational therapy.
- 11: noted, wrist surgery ORIF with autograft on 5 November 2018, knee has small cartilage defect on MRI dated 17 September 2019. Dental records not available for review. Unknown "sick" Patient has 20/20 vision bilaterally on exam 1 October 2019.
- 12: noted, wrist surgery ORIF with autograft on 5 November 2018, knee has small cartilage defect on MRI dated 17 September 2019,

dental records not available for review. Patient has 20/20 vision bilaterally on exam 1 October 2019.

- 13: noted, instructed to make an appointment, or come into sick call for any acute symptoms
- 15: noted, wrist surgery, ORIF with autograft on 5 November 2018, knee has small cartilage defect on MRI dated 17 September 2019. Patient asked for P2 profile for wrist to be removed, has followed ortho-hand and occupational therapy. R knee received monovisc injection on 31 October 2019.
- 16: noted, dental records not available for review
- 17: MRI normal on 11 October 2019, sleep study referral is in, [they] are under care of behavioral health currently
- 18: noted, instructed to make an appointment, or come into sick call for any acute symptoms

(c) On 7 November 2019, the applicant completed their medical history, block 29 lists the following explanations of “yes” answers:

- 10d: weather and pollen
- 10i: cough at night
- 10l: frequent colds
- 11a: gum trouble with missing teeth and hard to eat
- 11c: had eye surgery
- 11d: throat trouble
- 11e: comes and goes after eye surgery
- 11h: PRK
- 12a: painful shoulders; also, in the elbow
- 12c: back pain comes and goes
- 12g: arms; legs; hands
- 12h: right knee gave out and it took the company two weeks for [them] to get it looked at
- 12i: right knee gave out and it took the company two weeks for [them] to get it looked at, still made [them] do a ruck run until [they] got it looked at. wants them to do pt until their knee starts hurts but still makes [them] go throw the pain
- 12k: knee sleeve for pt does not help

(d) On their history, block 30a lists the examiner’s notes:

- 10d: noted, no diagnosis of asthma in review in AHLTA medical record, no prescription for rescue inhaler in review of AHLTA record
- 10i, l: noted, instructed to make an appointment, or come into sick call for any acute symptoms
- 11a: noted, dental records not available for review
- 11c: noted, current vision is 20/20 as of optometry appointment on 1 October 2019
- 11d, e: noted, instructed to make an appointment, or come into sick call for any acute symptoms
- 11h: noted current vision is 20/20 as of optometry appointment on 1 October 2019
- 12a: noted Right scaphoid ORIF w/graft 5 November 2018
- 12c, g: noted, instructed to make an appointment, or come into sick call for any acute symptoms

- 12h, i, k: noted, MRI on 17 September shows small cartilage defect, [they] received Monovisc injection in that knee on 31 October 2019
- 12l: noted, Right scaphoid ORIF w/graft 5 November 2018, R knee – MRI on 17 September shows small cartilage defect, [they] received Monovisc injection in that knee on 31 October 2019
- 12m, n: noted, Right scaphoid ORIF w/graft 5 November 2018, has followed with ortho hand and occupational therapy for about 12 months; unknown finger fracture
- 13a: noted, no encounters for GERD or acid reflux on review of AHLTA medical record
- 14c: noted
- 15b, c: noted, seen by TBI clinic for possible post-traumatic headaches on 30 October 2019, MRI of brain normal on 11 October
- 17a, d, f: noted, [they] are seeing behavioral health for alcohol use disorder
- 17c: noted, seen by TBI clinic for possible post-traumatic headaches on 30 October 2019, MRI of brain normal on 11 October
- 20: ER visit 21 April 2018 for facial injuries record in HAIMS
- 22: noted Right scaphoid ORIF w/graft 5 November 2018, PRK on 14 March 2019

(e) The same day, the applicant was seen for their medical examination at Mendoza SFCC, Fort Bliss, TX and was qualified for service with no recommendations indicated.

(5) The entire separation package is undated. The company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), for assaulting two noncommissioned officers; they recommended a General (Under Honorable Conditions) characterization of service.

(a) On 13 February 2020, the applicant elected to consult with defense counsel, elected to submit a statement on their behalf, and indicated they do believe they are suffering from Post-Traumatic Stress Disorder or Traumatic Brain Injury.

(b) In a self-authored statement, the applicant provides their mother passed away a month or so before leaving for training and they have tried to not allow this to tear them down. The applicant missed out on an opportunity to go to South Korea due to their broken wrist, which could have been used to get to know the other Soldiers in the company. They admit to having made a mistake but have since fulfilled their training, gave 100% effort, and attempted to prove to their leadership their desire to remain in the Army. Although they can handle hard times, they have been unable to rely on the Soldiers in their platoon, when they ask for help; either they do not want to help or they tell the applicant this is their own fault and the applicant has only done this to themselves. Their actions towards their NCOs was a mistake and will not happen again. The applicant has been showing they are willing to put in the work to better themselves, not just as a Soldier, but as a person by admitting responsibility and taking full accountability for their actions. They should not have gone out to drink that night, especially knowing they had PT the next morning. The bad decision led to a number of unprofessional actions such as being drunk on duty, showing up late to formation, and getting into altercations with two respected NCOs. Since, they have attended all of their appointments at BH for their struggles with alcohol and for their TBI, self-enrolling into anger management to improve on their behavior. They have not consumed any alcohol

for [six] months because they are taking their treatment seriously, not just going through the motions. The applicant has asked to be moved to a different platoon to be better assisted by leadership willing to help them when they need it, which they are not receiving now. Being a Soldier is very important to them and they would like nothing more than to remain in the Army. Because of their impending discharge, they were unable to go to the field and train with their team and have missed many opportunities that would have helped them become a better Soldier. If they could have a do over, they would, however, the applicant has placed all of their focus on fixing their problems and proving to everybody that they are a good Soldier and a valuable part of any team, if given another chance. Since their impending separation, although under care, they have had trouble sleeping, having trouble getting along with people in their company, and in their relationship.

(c) Three character letters from the applicant's family and former colleague (SGT), provide through self-awareness, the applicant regularly seeks to better themselves, have always been a hard working person in and out of the Army, has shown a great deal of integrity and responsibility, and is a morally upstanding individual who is genuinely concerned with their career in the Army.

(d) On 25 February 2020, the applicant acknowledged receipt of the separation notice. Defense counsel acknowledged consulting the applicant on their separation, their rights available to them, and the affects of a General (Under Honorable Conditions).

(e) The battalion commander concurred with the recommendation to separate the applicant, with a General (Under Honorable Conditions) characterization of service.

(6) The separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(7) On 11 March 2020, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 19 March 2020, with 2 years, 3 months, and 23 days of total service. The applicant has not completed their first full term of service.

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

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

(1) **Applicant provided:** On 9 April 2021, the applicant provided a VA Rating Decision, indicating they have a service-connected disability with a 50% rating effective 20 March 2020, for Adjustment Disorder and Depression (also claimed as Anxiety, Depression) with Traumatic Brain Injury (TBI), and bilateral Tinnitus.

(2) **AMHRR Listed:** On 3 December 2019, the applicant completed a mental status evaluation at 3/1 Embedded Behavioral Health (EBH), Fort Bliss, TX, for their separation, with no diagnoses listed. The provider indicates the applicant was screened for depression, anxiety, PTSD, and TBI with negative findings. The applicant has been screened for sexual trauma history. They have no BH condition or diagnosis that constitutes a matter of extenuation in relation to the basis for the administrative separation, solely on the clinical judgement of the provider and does not constitute a forensic legal opinion. From a psychiatric perspective, the applicant meets medical

retention standards (IAW AR 40-501) and does not require a referral to IDES/MEB. The applicant is psychiatrically cleared, for administrative separation and/or any other administrative action deemed appropriate by the command. The applicant had a scheduled follow-up appointment with EBH on 16 December 2019.

5. APPLICANT-PROVIDED EVIDENCE: Seven DD Form 293s (Application for the Review of Discharge); Veterans Affairs (VA) Rating Decision

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

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

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

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

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

the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is

merited by the Soldier's overall record. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) 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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c, Misconduct (Serious Offense).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

h. All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

i. Manual for Courts-Martial (2019 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 91 (Insubordinate conduct toward noncommissioned officer, striking or assaulting), states in subparagraph, the maximum punishment is a dishonorable discharge, forfeiture of all pay and allowances, and one year confinement.

j. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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

a. The applicant requests an upgrade to Honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the RA for 3 years, 16 weeks as a PV2 and promoted to PFC. They served for 1 year, 9 months, and 4 days prior to their misconduct. They were flagged, Suspend Favorable Personnel

Actions (FLAG), for field-initiated involuntary separation and punishment phase. The applicant verbally and physically assaulted two noncommissioned officers. They accepted nonjudicial punishment and as a result, was demoted to PV2. The applicant was processed for separation IAW AR 635-200, Chapter 14-12C, Misconduct (Serious Offense) and discharged with a General (Under Honorable Conditions) characterization of service. Defense counsel consulted the applicant on their separation, their rights available to them, and the effects of a General (Under Honorable Conditions).

(1) The applicant completed a mental status evaluation for their separation, providing no BH diagnosis and a follow-up appointment with BH. On the medical history, the provider noted the applicant was seeing BH for Alcohol Use Disorder. The applicant provided a VA Rating Decision, indicating they have a service-connected disability with a 50% rating, for Adjustment Disorder and Depression (also claimed as Anxiety, Depression) with Traumatic Brain Injury (TBI), and bilateral Tinnitus.

(2) They served 2 years, 2 months, and 23 days of their 3 year, 16 week contractual obligation.

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.

2. 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: Concussion with LOC of 30 minutes or less; Alcohol Dependence; Anxiety DO, unspecified; PTSD (70%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that diagnoses of Concussion and Anxiety DO were made during active service. Service connection for PTSD establishes it began during active service.

(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 BH conditions, TBI and PTSD, which mitigate his misconduct. As there is an association between TBI/PTSD and use of alcohol to self-medicate symptoms, there is a nexus between these conditions and his offense of being drunk on duty. As there is an association between multiple TBIs, impaired impulse control and poor judgement, there is a nexus between his multiple TBIs and his verbal and physical assaults (chest bumping and slapping a hand) of two NCOs. Record review indicates that the applicant has a significant history of multiple head injuries resulting in a diagnosis of Cognitive Communication Disorder. In the BH Advisor's opinion, the cumulative effects of these head injuries more likely than not affected his executive functioning leading to poor judgment, decreased impulse control and assaultive behavior. [Note-diagnosis of Anxiety DO, unspecified, is subsumed under PTSD diagnosis.]

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the applicant's PTSD and TBI outweighed the basis for separation - assaulted two noncommissioned officers - for the aforementioned reasons.

b. Response to Contention(s):

(1) The applicant contends to having made a mistake, but have since fulfilled their training, gave 100% effort, and attempted to prove to their leadership their desire to remain in the Army. Although they can handle hard times, they have been unable to rely on the Soldiers in their platoon, when they ask for help; either they do not want to help, or they tell the applicant this is their own fault, and the applicant has only done this to themselves. The board considered this contention during proceedings and voted to grant an upgrade based on the applicant's PTSD and TBI outweighing the applicant's basis for separation (assaulted two noncommissioned officers). Thus, and upgrade of the characterization of service to honorable is warranted.

(2) The applicant contends the bad decision led to a number of unprofessional actions such as being drunk on duty, showing up late to formation, and getting into altercations with two respected NCOs. Since, they have attended all of their appointments at BH for their struggles with alcohol and for their TBI, self-enrolling into anger management to improve on their behavior. They have not consumed any alcohol for [six] months because they are taking their treatment seriously, not just going through the motions. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and TBI outweighing the applicant's basis for separation as outlined above in paragraph 9a (4) and 9b (1).

(3) The applicant contends they asked to be moved to a different platoon to be better assisted by leadership willing to help them when they need it, which they are not receiving now. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and TBI outweighing the applicant's basis for separation Thus, and upgrade of the characterization of service.

c. The board determined the discharge is inequitable based on the applicant's PTSD and TBI outweighing the basis for separation - assaulted two noncommissioned officers. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable with no changes to the reason and reentry code.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's PTSD and TBI outweighing the basis for separation - assaulted two noncommissioned officers. Thus, the prior characterization is no longer appropriate.

(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.

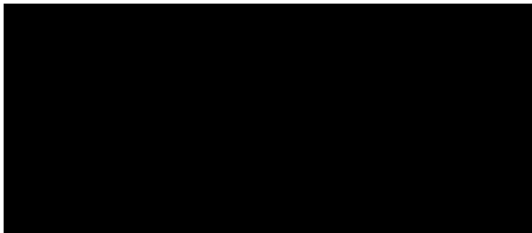
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

3. BOARD ACTION DIRECTED:

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

Authenticating Official:

5/3/2024



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