

1. Applicant's Name: [REDACTED]
- a. Application Date: 30 June 2020
- b. Date Received: 14 December 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 RE code to RE-1, SPD code, and narrative reason to "For the Convenience of the Government." The applicant also requests that any negative documents be set aside in their entirety.

b. The applicant through counsel, seeks relief contending, in effect, the discharge was based on an erroneous investigation. The applicant should not have been separated. The applicant's discharge has a procedural defect, unfair at the time and now, and does not reflect the applicant's character.

(1) The applicant through counsel states, after shooting late at the Tennessee Game Country, the applicant was unable to get a hold of their godfather. The applicant's best friend worked as the unit's armorer, informed the applicant to take the applicant's weapons to the arms room. The person at the arms room was intoxicated and told the applicant to take the weapons to the applicant's room for the night.

(2) One night after being hit by shrapnel at the demolition range the applicant ruptured their eardrums. While lying on the ground, the squad leader walked pass and kicked the applicant in the head nonchalantly. That night the applicant went back to their room, and there were three NCO's that kicked in the applicant's door. The applicant was grabbed more than once. The applicant called their fiancée and told them to call the MP and the first sergeant said they already called the MPs. The applicant wanted to press charges; however, the first sergeant had the MPs check the barracks room and the applicant's pistols were found and the applicant was arrested.

(3) There is a procedural defect in this case. Although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was a hasty command initiated request for separation with no fully determined reason to initiate the discharge. The applicant was experiencing difficulties mentally and emotionally; however, the command did not find out if there was any way they could have helped the applicant and the applicant was never offered or provided with rehabilitation. A command initiated request, per reference (d) (analyst notes there is no reference (d)), involuntary separation processing may not be initiated until the Servicemember has been notified formally with concerning performance deficiencies related to the physical or behavioral condition and advised of medical resources (if applicable) that may assist in the member's retention. 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 applicant was not allowed these

opportunities. In this case, the command did not have the proper authority to administratively separate the applicant.

(4) The under honorable conditions discharge does not serve further purpose. The events that took place are no longer relevant to the applicant's life and the applicant has lived since in as responsible a manner as they could. There is no valid equitable purpose in leaving the discharge in place.

(5) While serving, the applicant went to Air Assault school and received the air assault badge. The applicant was the only E-4 to be on a detail to West Point to train. The applicant worked with a task force that involved the Federal Bureau of Investigation (FBI), the applicant was part of a security detail that searched for missing U.S citizens and worked security. When the applicant returned, the applicant struggled with some of the things that was seen. The applicant suffered from extreme paranoia, and during this time the applicant received news that a Soldier on Fort Campbell murdered another Soldier. The applicant knew both of the Soldiers and was very close to the victim.

(6) The applicant has a clean criminal record and feels that their punishment has been served and is requesting that the discharge characterization be upgraded to be able to get jobs that require an honorable discharge.

c. Board Type and Decision: In a records review conducted on 26 April 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, and the circumstances surrounding the discharge (PTSD diagnosis), 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, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision.

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: 4 November 2016

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 27 September 2016

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant, violated a lawful order, policy memorandum 17, by storing two privately owned weapons in their barracks room on 13 May 2016. On 10 July 2016, the applicant violated Tennessee Code Title 39 for public intoxication; and failed to be at the appointed place of duty on 5 August 2016.

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

(4) **Legal Consultation Date:** 11 October 2016

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

(6) Separation Decision Date / Characterization: 26 October 2016 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 July 2013 / 3 years and 16 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 106
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12B10, Combat Engineer / 3 years, 3 months, and 12 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** AAM-2, NDSM, GWTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Two monthly performance counselings for October and December 2015, shows the applicant performed to standard, was motivated, professional, and knowledgeable.

(2) Counseling, dated 18 December 2015, shows the applicant was assessed as high risk because the applicant was experiencing mental health issues and began to seek help. Medications the applicant was prescribed affected the applicant's ability to operate a motor vehicle and had certain side effects.

(3) An Initial Rehabilitation Team Meeting Agreement and Disposition, date unspecified, shows the applicant was scheduled to attend a treatment planning session on 16 June 2016 and Psycho Therapeutic Groups once a week for 10 weeks from 20 July - October 2016. The Rehabilitation Team thought the applicant was retainable.

(4) A monthly performance counseling for March and April 2016, shows the applicant's performance was great, however, the applicant needed to work on being on time.

(5) On 13 May 2016:

(a) Sworn Statement by the applicant, dated 13 May 2016, states the applicant was caught with firearms in their barracks room and wanted to cooperate because it was a bad situation and a misunderstanding.

(b) Four separate sworn statements from the First Sergeant, applicant's roommate, a MP officer, and a NCO, states they were present when two firearms were found in the applicant's barracks room.

(c) Receipt for Inmate or Detained Person, dated 13 May 2016, shows the applicant was charged with Found Contraband and Unlawful Possession of Firearm, and was released to the first sergeant.

(d) The applicant was flagged for commander's investigation (LA) and adverse action (AA) effective 13 May 2016.

(6) Counseling, dated 18 May 2016, shows the applicant was counseled for drinking alcohol while taking prescription medications, disrespect to several NCOs, failure to obey an order or regulation, and unlawful possession of two firearms in the barracks.

(7) Law Enforcement Report - 2nd Corrected Final, dated 20 May 2016, shows an investigation established the applicant committed the offense of Failure to Register Weapon and Unlawful Storage of Weapon. On 13 May 2016, the applicant was apprehended and transported to the Installation Provost Marshal Office. The applicant was advised of their legal rights which the applicant waived and rendered a written sworn statement admitting to the above offenses. The applicant was further processed and released to the unit. This was a final report.

(8) The applicant's two pistols were registered on Fort Campbell on 20 June 2016.

(9) Commander's critical information requirements pages 1 and 3 shows the applicant was apprehended for public intoxication on 10 June 2016 (10 July 2016).

(10) Counseling, dated 4 August 2016, shows the applicant was counseled for public intoxication on 10 July 2016. The applicant was acquitted of this charge.

(11) Counseling, dated 5 August 2016, shows the applicant was counseled for missing the morning accountability formation.

(12) A monthly performance counseling for May - July 2016, shows the applicant's performance was great and passed the Army Physical Fitness Test above the squad average goal of 250. The applicant needed to improve on their emotions.

(13) Order for the Expungement of Criminal Offender Record, dated 9 August 2016, shows the applicant's public intoxication charge from 10 July 2016 was dismissed with a fee.

(14) FG Article 15, dated 11 August 2016, for failing to obey a lawful order by storing two privately owned weapons in their barracks room. The punishment consisted of a reduction from E-4 to E-1; forfeiture of \$783.00 pay per month for 2 months (suspended); and extra duty and restriction for 45 days.

(15) On 27 September 2016, the commander initiated action to separate the applicant for storing two privately owned weapons in their barracks room on 13 May 2016, public intoxication on 10 July 2016, and failing to be at the appointed place of duty on 5 August 2016.

(16) On 18 October 2016, the applicant requested to be allowed to remain in service through their expiration term of service (ETS) of 11 November 2016 (analyst notes ETS was 22 November 2016). Stating that they had been punished through a FG Article 15 with reduction to the lowest rank, and that the characterization of service for separation would have a tremendous negative impact.

(17) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant had not completed the first full term of service with 18 days remaining in their contractual agreement. The applicant was discharged on 4 November 2016 under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was not authenticated with the applicant's electronic signature.

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

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

(1) **Applicant provided:** VA Disability Rating Decision, dated 15 August 2017, showing the applicant was rated 80 percent disabled which includes 50 percent for PTSD.

(2) **AMHRR Listed:**

(a) Report of Mental Status Evaluation (MSE), dated 26 July 2016, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was enrolled in the Army Substance Abuse Program for alcohol use. The applicant was screened for PTSD and mild TBI, resulting in positive results for PTSD. The applicant was receiving behavioral health treatment and was recommended to continue to do so until their separation. The applicant's behavioral health diagnosis did not amount to a medical disability and was not service disqualifying per AR 40-501. The applicant's behavioral health diagnosis did not constitute matters in extenuation in the clinical judgment of the provider. The applicant was diagnosed with PTSD (non-combat related).

(b) Report of Medical History, dated 24 August 2016, shows the examining medical physician noted in the comments section: The applicant is in treatment for the items the applicant stated in block 29 and recommended that they continue with follow up through the VA and their primary care manager. The applicant listed several medical conditions that included anxiety disorder, panic attack disorder, and PTSD.

(c) Memorandum, Synopsis of Treatment for Record Closure, dated 12 October 2016, shows the applicant was enrolled in the Substance Use Disorder Clinical Care (SUDCC) program for alcohol use on 20 June 2016 and successfully completed the program on 12 October 2016.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; legal brief; and VA Rating Decision.

6. POST SERVICE ACCOMPLISHMENTS: The applicant stopped drinking, married, and has two daughters. The applicant has worked at a gas station, obtained a security clearance, and worked with the TSA. The applicant is currently a plumber and runs their own truck for Roto Rooter, a prestigious plumbing company.

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 1-32, Medical examinations, and mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under chapters 13 or 14 (section III).

(2) 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

(d) The following additional notice requirements will be satisfied, as appropriate:

- If separation processing is initiated for more than one reason, the Soldier will be notified of the basis for each reason, including the circumstances upon which the action is based, per this regulation
- If the respondent is in civil confinement or absent without leave, the relevant notification procedures apply
- Additional notification requirements are set forth in chapter 5 when characterization of service as General (under honorable conditions) is authorized, and the Soldier is processed for separation by reason of convenience of the Government
- The intermediate commander(s), in making recommendations on the type of discharge and characterization of service, may recommend any type of discharge and characterization of service authorized for the notified basis of separation but will normally be limited to considering facts contained within the proposed action
- If the intermediate commander(s) considers additional unfavorable information outside that contained in the proposed action in making recommendations, the

intermediate commander will state, in writing, the specific facts and incidents in the Soldier's record that warrant such type of discharge and characterization.

- The Soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander
- Military legal counsel will be made available to assist in preparation of rebuttal of the additional material
- An explanation by the intermediate commander(s) of the reasons for his/her recommendations that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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, paragraph 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 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 requests, through counsel, an upgrade to honorable, and changes to the RE code to RE-1, SPD code, and narrative reason to "For the Convenience of the Government." The applicant also requests that any negative documents be set aside in their entirety. 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, 3 months, and 12 days. The applicant received a FG Article 15 for storing two privately owned weapons in their barracks room and two negative counselings for public intoxication and missing formation. The applicant's public intoxication charge was dismissed on 9 August 2016. On 4 November 2016, the applicant was discharged on 4 November 2016 under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions). The applicant had 18 days remaining in their contractual agreement.

c. The applicant through counsel, requests the narrative reason for the discharge to be changed to "For the Convenience of the Government." 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, requests the SPD to be changed. 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 (SPD Codes) 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, requests the RE code to be changed to RE-1. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-201, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes if appropriate.

f. The applicant through counsel contends, in effect, there is a procedural defect in this case. Although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was a hasty command initiated request for separation with no fully determined reason to initiate the discharge. The applicant was experiencing difficulties mentally and emotionally; however, the command did not find out if there was any way that they could have helped the applicant and was never offered or provided with rehabilitation. A command initiated/involuntary separation processing may not be initiated until the Servicemember has been notified formally with concerning performance deficiencies related to the physical or behavioral condition and advised of medical resources (if applicable) that may assist in the member's retention. 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 applicant was not allowed these opportunities. In this case, the command did not have the proper authority to administratively separate the applicant.

(1) AR 635-200, paragraph 1-32, states medical examinations and mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under chapters 13 or 14 (section III).

(2) AR 635-200, paragraph 2-2d, states, if separation processing is initiated for more than one reason, the Soldier will be notified of the basis for each reason, including the circumstances upon which the action is based, per this regulation.

(3) AR 635-200, section III, 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.

(4) The AMHRR shows:

(a) The applicant underwent a MSE on 26 July 2016, which shows the applicant was diagnosed with PTSD (non-combat related) and was enrolled in the Army Substance Abuse Program for alcohol use.

(b) A Report of Medical History, dated 24 August 2016, shows the examining medical physician noted in the comments section: The applicant is in treatment for the items the applicant stated in block 29 and recommended that they continue with follow up through the VA and their primary care manager. The applicant listed several medical conditions that included anxiety disorder, panic attack disorder, and PTSD.

(c) A law enforcement report, dated 20 May 2016, shows an investigation established the applicant committed the offense of Failure to Register Weapon and Unlawful Storage of Weapon.

(d) The evidence of the applicant's AMHRR 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.

(e) On 27 September 2016, the commander initiated action to separate the applicant for storing two privately owned weapons in their barracks room on 13 May 2016, public intoxication on 10 July 2016, and failing to be at the appointed place of duty on 5 August 2016. However, the public intoxication charge was dismissed with a fee on 19 July 2016. On this same date, the applicant acknowledged receipt of the notification to separate the applicant.

(f) Memorandum, Synopsis of Treatment for Record Closure, dated 12 October 2016, shows the applicant was enrolled in the SUDCC program for alcohol use on 20 June 2016 and successfully completed the program on 12 October 2016.

(5) The applicant provided a VA Disability Rating Decision, dated 15 August 2017, showing the applicant was rated 80 percent disabled which includes 50 percent for PTSD.

g. The applicant through counsel contends, good service, including receiving an air assault badge, detailed to train at West Point, and worked with a task force that involved the FBI. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

h. The applicant through counsel contends, in effect, an honorable discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

i. The applicant requests that any negative documents be set aside in their entirety. This 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.

j. The applicant through counsel, contends, they stopped drinking, married, and has two daughters. The applicant has worked at a gas station, obtained a security clearance and worked with the TSA, and is currently a plumber with Roto Rooter. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. However, there is no law or regulation which provides an unfavorable discharge may be upgraded based solely on the passage of time or good conduct in civilian life subsequent to leaving the service. Outstanding post-service conduct, to the extent such matters provide a basis for a more thorough understanding of the applicant's performance and conduct during the period of service under review, is considered during Board proceedings. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

k. Analyst notes the legal brief states to consider the applicant's personal affidavit and statements from supervisors and friends. The Military Review Boards representative emailed the applicant and counsel on 26 February 2024 requesting these documents but received no response as of 11 March 2024.

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 diagnosis/experience:

(2) Did the condition exist or experience occur during military service? **Yes.** PTSD

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor determined that the medical condition and experience mitigate the basis. The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, avoidance, and substance use, the public intoxication and FTR are mitigated. This advisor also mitigates the weapons in the barracks. Even though the applicant asserts keeping his weapons in the barracks was a stupid mistake, and it more likely than not was, there is also the possibility they provided a sense of safety. Specifically, given the event occurred after his primary abuser, who almost killed him as a teen, assaulted him again while visiting family, it is possible having self-protective measures close relieved trauma symptoms.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition –(PTSD) outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant through counsel contends, in effect, harassment by members of the chain of command.

The Board considered this contention non-persuasive during its deliberations.

(2) The applicant through counsel contends, in effect, there is a procedural defect in this case. Although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was a hasty command initiated request for separation with no fully determined reason to initiate the discharge. The applicant was experiencing difficulties mentally and emotionally; however, the command did not find out if there was any way that they could have helped the applicant and was never offered or provided with rehabilitation. A command initiated/involuntary separation processing may not be initiated until the Servicemember has been notified formally with concerning performance deficiencies related to the physical or behavioral condition and advised of medical resources (if applicable) that may assist in the member's retention. 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 applicant was not allowed these opportunities. In this case, the command did not have the proper authority to administratively separate the applicant.

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 outweighing the applicant's basis for separation - violated a lawful order, policy memorandum 17, by storing two privately owned weapons in their barracks room on 13 May 2016. On 10 July 2016, the applicant violated Tennessee Code Title 39 for public intoxication; and failed to be at the appointed place of duty on 5 August 2016.

(3) The applicant through counsel contends, good service, including receiving an air assault badge, detailed to train at West Point, and worked with a task force that involved the FBI.

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 outweighing the applicant's basis for separation - violated a lawful order, policy memorandum 17, by storing two privately owned weapons in their barracks room on 13 May 2016. On 10 July 2016, the applicant violated Tennessee Code Title 39 for public intoxication; and failed to be at the appointed place of duty on 5 August 2016.

(4) The applicant through counsel contends, in effect, an honorable discharge will allow the applicant to obtain better employment.

The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(5) The applicant through counsel, contends, they stopped drinking, married, and has two daughters. The applicant has worked at a gas station, obtained a security clearance, and worked with the TSA, and is currently a plumber with Roto Rooter.

The Board acknowledged the applicant's Post Service accomplishments.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, and the circumstances surrounding the discharge (PTSD diagnosis).

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, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Quality) and concurred with the conclusion of the medical advising official that the applicant's PTSD only mitigates the applicant's public intoxication and FTRs. The Medical advisor also mitigates the weapons in the barracks because they possibly provided a sense of safety for the applicant due to his abuse as a child and recent assaults toward him from his family member. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and with a 3-2 Vote decided that an upgrade to character and reason was warranted.

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(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(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:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

7/31/2024



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