

**1. Applicant's Name:**

- a. **Application Date:** 18 November 2020
- b. **Date Received:** 27 November 2020
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general honorable conditions. The applicant requests an upgrade of their characterization of service to honorable, a change of their separation code, reentry code and the narrative reason for separation.

(2) The applicant seeks relief stating after they were separated from the U.S. Army there were diagnosed with severe Post-Traumatic Stress Disorder (PTSD) by the Department of Veterans Affairs (VA). They are currently rated by the VA with 100-percent disability rating for PTSD. Their discharge was unreasonable due to their undiagnosed and untreated condition.

(3) They were always an excellent Soldier with two combat tours to Iraq and they received two Army Good Conduct Medals. They would like to use the Post 9/11 GI Bill to go back to school and they need an honorable characterization of service to use their benefits.

**b. Board Type and Decision:** In a records review conducted on 31 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

**3. DISCHARGE DETAILS:**

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

**b. Date of Discharge:** 2 May 2012

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** on or before the applicant's acknowledgment of receipt of separation notice on 27 March 2012

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

- on 11 December 2011, assaulted a superior Noncommissioned Officer (NCO), another NCO, their spouse, three adult males, an adult female, a teenage female, and a juvenile female
- on 4 February 2012, threatened to shove sleeping pills down their spouse's throat
- on 20 February 2012, violated a restraining order
- on 2 March 2012, violated a restraining order

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

**(4) Legal Consultation Date:** 11 April 2012

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

**(6) Separation Decision Date / Characterization:** 20 April 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 21 November 2007 / NIF

**b. Age at Enlistment / Education / GT Score:** 21 / GED / 96

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 13B1O, Cannon Crewmember / 5 years, 10 months, 22 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (17 January 2007 – 2 April 2008, 16 December 2009 – 3 December 2010)

**f. Awards and Decorations:** ARCOM-2, AAM, NDSM, GWTSM, ICM-2CS, ASR, OSR-2

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** An Incident Report, 82nd Airborne Division, Emergency Operations Center, dated 11 December 2011, reflects the applicant as the named subject, with a type of incident, "Apprehension of Soldier." A summary of the incident states, on or about 11 December 2011, the applicant was arrested by civil authorities for simple assault of five adults and one juvenile. They were attending an event and was intoxicated. It was unknown what initiated the applicant's behavior.

**(2)** A DA Form 8003 (Army Substance Abuse Program (ASAP) Enrollment), dated 13 December 2011, reflects the applicant's command referral to the ASAP for a comprehensive assessment to determine whether or not they meet the criteria for enrollment. The reason for the referral is shown as "Assault Arrest."

**(3)** A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 12 January 2012, reflects the applicant received nonjudicial punishment for, on or about 11 December 2011, assaulted a superior NCO by striking them on the face with a closed fist, assaulted another NCO by striking them on the face with a closed fist, and assaulted their spouse by pulling their hair. Their punishment consisted of a reduction to the rank/grade of specialist/E-4, forfeiture of \$1,133.00 pay, and extra duty for 45 days.

**(4)** A memorandum, Womack Army Medical Center, subject: Medical Status of [Applicant], dated 12 January 2012, reflects the applicant was treated by the Traumatic Brain Injury (TBI) and Neurorehabilitation Clinic after sustaining a concussion as a result of a fall on 11 December 2011. The Deputy Chief and Director of Clinical Care states the common symptoms following a concussion include confusion, an alteration in consciousness or periods

of amnesia, irritability or combativeness, and disorientation. They believe that these symptoms may have contributed to or been the primary causative factor of their actions at that time.

(5) A DA Form 3349 (Physical Profile), dated 15 February 2012, reflects the applicant received a 90-day temporary profile for the following medical conditions, Personality Disorder, Adjustment Disorder with Mixed Disturbance of Emotion and Conduct, and Alcohol Dependence. They was assigned physical profile ratings of "3" under the Psychiatric category which signifies the individual has a medical condition that may require significant limitations.

(6) Three DA Forms 4856 (Developmental Counseling Form), dated 12 February 2012, 13 February 2012, and 16 February 2012, reflects the applicant received event-oriented counseling from their company commander and was issued a No Contact Order for 72 hours, prohibiting them from contact with their spouse.

(7) A DA Form 3822 (Report of Mental Status Evaluation), dated 16 February 2012, reflects the applicant as unfit for duty due to a personality disorder or other mental condition that does not amount to a medical disability.

(a) Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

(b) Section V (Diagnoses) reflects an Axis I (Psychiatric Conditions) of Adjustment Disorder with Mixed Disturbance of Emotion and Conduct, and Alcohol Dependence, and an Axis II (Medical Conditions) of Personality Disorder Not Otherwise Specified.

(c) Section VI (Proposed Treatments) reflects the applicant receive follow-up appointments of the first day after their release from pretrial confinement. Recommended command referral to the unit chaplain, ASAP, and Judge Advocate General.

(d) Section VIII (Additional Comments) reflects the applicant's temporary profile with a Psychiatric rating of a "3" to expire in 90 days. The examining staff psychiatry states the applicant has been screened for substance use disorder and found to have an alcohol dependency. The applicant does not have a psychiatric condition that would disqualify them from military service. They do have an alcohol related incident that led to nonjudicial punishment and alcohol contributed to their most recent hospitalization. They are appropriate for any administrative action deemed appropriate by command, including an expeditious separation for Substance Abuse Rehabilitation Failure (Chapter 9).

(8) An additional DA Form 4856, dated 16 February 2012, reflects the applicant received event-oriented counseling from their company commander for a suicide watch, results of their Mental Status Evaluation, and violating the seven Army Values. Part III (Summary of Counseling), states the key points of discussion –

(a) Due to the applicant's misconduct and pending charges, the commander placed the applicant under suicide watch with the believe they may be a threat to themselves.

(b) The applicant's legal blood test results showed the applicant had alcohol in their system on 12 February 2012, after being directed by command as well as the ASAP not to consume any alcohol yet the applicant willfully disobeyed.

(c) The applicant violated the seven Army Values.

(d) The applicant gave a false report to their company commander stating no, that they were not drinking alcohol anymore; however, multiple sworn statements state otherwise.

(9) A DA Form 3822, dated 21 February 2012, reflects that applicant as fit for full duty, including deployment.

(a) Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

(b) Section V (Diagnoses) reflects an Axis I (Psychiatric Conditions) of Adjustment Disorder with Mixed Disturbance of Emotion and Conduct, and Alcohol Dependence, and an Axis II (Medical Conditions) as "Deferred."

(c) Section VI (Proposed Treatments) reflects "None."

(d) Section VIII (Additional Comments) reflects the applicant was screened for PTSD and mild TBI and the screenings were negative. The applicant was cleared psychiatrically and for any legal proceedings.

(10) An Enlisted Record Brief, dated 28 February 2012, reflects the applicant was promoted to the rank/grade of sergeant/E-5 on 1 December 2010 and reduced to the rank/grade of specialist/E-4 on 12 January 2012.

(11) A memorandum, U.S. Army Installation Management Command, Fort Bragg, subject: Pre-Separation Counseling on Education Benefits, dated 28 February 2012, the applicant acknowledged they have received counseling on Veteran's Education Benefits. They understand that they must receive a fully honorable discharge and meet time-in-service requirements in order to be eligible to receive benefits. They also understand the VA determines eligibility.

(12) A DD Form 2807-1 (Report of Medical History), dated 5 March 2012, reflects the applicant marked "Yes" to multiple medical conditions to include mental health symptoms. The applicant self-reported a period of 3-5 minutes of unconsciousness on 11 December 2011 due to a fall and hit the left temple against a curb. Item 30a (Comments) reflects the examiner commented, the applicant was involved in an altercation and had loss of consciousness for 3-5 minutes, went to TBI clinic, zero sequelae.

(13) A DD Form 2808 (Report of Medical Examination), dated 5 March 2012, reflects the examining physician noted the applicant was being followed by behavior health and chapter processing.

- item 74b (Physical Profile) reflects the applicant's ratings of "3" under the Psychiatric category
- item 77 (Summary of Defects and Diagnoses) reflects knee pain and depression

(14) A memorandum, Bravo Battery, 3rd Battalion, 321st Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern Misconduct (Including a Domestic Violence offense under the UCMJ for which the SM's Spouse may be Entitled to Transitional Compensation), [Applicant], undated, notified the applicant of initiating actions to separate them for a Pattern of Misconduct, for misconduct described in previous

paragraph 3c(2). On 27 March 2012, the applicant acknowledged receipt of their separation notice.

(15) On 11 April 2012, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to submit a statement on their behalf stating, because the incidents listed in their Notification of Separation have either been dismissed or are still in litigation in the civilian court system, they request reconsideration of their separation. Their TBI was the cause of the incident on 11 December 2011, as indicated in the memorandum, Womack Army Medical Center, subject: Medical Status of [Applicant], dated 12 January 2012. The TBI incident began with a fall that left them unconscious for three minutes. Before this incident they never had any legal issues or received any nonjudicial punishment. They request consideration of their entire military record.

(16) A memorandum: Bravo Battery, 3rd Battalion, 321st Field Artillery Regiment, Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct (Including a Domestic Violence offense under the UCMJ for which the SM's Spouse may be Entitled to Transitional Compensation), [Applicant], undated, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The commander states the applicant is currently enrolled in the ASAP.

(17) A memorandum, Headquarters, 18th Fires Brigade (Airborne), subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct (Including a Domestic Violence offense under the UCMJ for which the SM's Spouse may be Entitled to Transitional Compensation), [Applicant], 20 April 2012, the separation authority directed the applicant be separated from the Army prior to the expiration of current term of service and recommended their service be characterized as General (Under Honorable Conditions).

(18) Two DA Forms 4187 (Personnel Action), dated 29 March 2012 and 25 April 2012, reflects the applicant was "Confined by Civilian Authorities" from 29 March 2012 to 10 April 2012.

(19) On 2 May 2012, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 5 years, 10 months, and 22 days of net active service this period and they completed their first full term of service. Item 13 (Remarks) reflects Continuous Honorable Active Service – 30 May 2006 through 20 November 2007.

i. **Lost Time / Mode of Return:** 29 March 2012 – 9 April 2012 / NIF

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

(1) **Applicant provided:** VA letter and VA/Department of Defense (DoD) eBenefits printout reflecting the applicant's 100-percent disability rating for PTSD

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(8).

##### 5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214

- United States Park Police, Commander's Award
- 10-Year Certificate in the service in the Government of the United States of America
- VA Letter, reflecting the applicant's summary of benefits and their combined service-connected evaluation of 100-percent
- VA/DOD eBenefits printout reflecting the applicant's service connected disability of PTSD with alcohol use disorder, rated at 100-percent, effective 18 May 2018

#### **6. POST SERVICE ACCOMPLISHMENTS:**

- United States Park Police, Commander's Award
- 10-Year Certificate in the service in the Government of the United States of America

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

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

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

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

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

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

d. Army Regulation 40-501 (Standards of Medical Fitness), dated 4 August 2011, governed medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 (Physical Profiling) prescribed a system for classifying individuals according to functional abilities.

(1) The functions have been considered under six factors designated "P-U-L-H-E-S":

- P – Physical Capacity or Stamina
- U – Upper Extremities
- L – Lower Extremities
- H – Hearing and Ears
- E – Eyes
- S – Psychiatric

(2) Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial is to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, will be evaluated in determining the numerical designation 1, 2, 3, or 4.

- an individual having a numerical designation of "1" under all factors is considered to possess a high level of medical fitness
- a physical profile designator of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations

- a profile serial containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations – the individual should receive assignments commensurate with his or her physical capability for military duty
- a profile serial containing one or more numerical designators of "4" indicates that the individual has one or more medical conditions or physical defects of such severity that performance of military duty must be drastically limited

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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

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

**(3)** A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

**(4)** Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

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

**(b)** Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.



**(6)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

**(7)** Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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

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

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

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

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

**h.** 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.

## **8. SUMMARY OF FACT(S):**

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides the applicant received nonjudicial punishment for assaulting a superior NCO, another NCO, and their spouse. The Notification of Separation memorandum additionally shows the applicant threatened to shove sleeping pills down their spouse's throat and the applicant violated a Restraining Order twice. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions).

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. The applicant's Army Military Human Resource Record provides any documentation of a diagnosis of PTSD during the applicant's military service.

e. 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 [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: the applicant held an in-service, on-post diagnosis of Personality Disorder NOS (antisocial) and Adjustment Disorder with Mixed Emotions and Conduct. An off-post psychiatrist listed MDD, GAD, and Panic Disorder. Post-service, the applicant is 100% service connected for combat related PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an in-service, on-post diagnosis of Personality Disorder NOS (antisocial) and Adjustment Disorder with Mixed Emotions and Conduct. An off-post psychiatrist listed MDD, GAD, and Panic 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 in terms of whether psychiatric medication contributed to the assaults, the medication would have sedated him rather than resulted in aggression. Regarding TBI, the applicant was assessed and TBI ruled out with the provider noting there was no support for a concussion outside of self-report. Of note, the applicant was able to discuss his actions and make purposeful attempts to avoid consequences by providing alternate stories across individuals over time reflecting intact

cognitive processes. Lastly, PTSD would not have resulted in the misconduct. It is more likely than not the Personality Disorder fueled the misconduct. While Personality Disorders provide context, they are not mitigating as an individual is able to make fully informed choices, knowing right from wrong and consequences.

**(4)** Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's diagnosis of Personality Disorder NOS (antisocial) and Adjustment Disorder with Mixed Emotions and Conduct, MDD, GAD, and Panic Disorder and combat related PTSD outweighed the medically unmitigated misconduct - Assaulted a superior NCO, another NCO, his spouse, three adult males, an adult female, a teenage female, and a juvenile female; threatened to shove sleeping pills down his spouse's throat; violated a restraining order (twice).

**b.** Response to Contention(s):

**(1)** The applicant contends after they were separated from the U.S. Army they were diagnosed with severe PTSD by VA. Their discharge was unreasonable due to their undiagnosed and untreated condition. The Board considered this contention and determined the applicant's severe misconduct was not outweighed by PTSD.

**(2)** The applicant contends they were always an excellent Soldier with two combat tours to Iraq and they received two Army Good Conduct Medals. The Board acknowledges the applicant's service, to include combat service, however it does not mitigate the serious misconduct of assault.

**(3)** The applicant contends they would like to use the Post 9/11 GI Bill to go back to school and they need an honorable characterization of service to use their benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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

**d.** Rationale for Decision:

**(1)** The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the Board found evidence of in-service mitigating factors (length, quality, combat), however concurred with the conclusion of the medical advising official that the applicant's BH condition does not mitigate the applicant's misconduct (assaulted 5 adults and one juvenile) and violating restraining orders (applicant was arrested for violating a restraining order against his wife). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable and found that the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General discharge was proper and

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equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

2/10/2024

**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