

1. Applicant's Name: [REDACTED]**a. Application Date:** 4 November 2020**b. Date Received:** 9 November 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 an upgrade to honorable.

b. The applicant seeks relief contending, in effect, during deployments in support of Operations Enduring and Iraqi Freedom, the applicant suffered significant mental trauma by the loss of buddies and fellow Rangers, killed and wounded from combat and improvised explosive devices (IED). In the applicant's nearly 4 year career, the applicant completed four combat tours. The applicant's civilian misconduct began 2 days following the return from the fourth combat tour and was confined to a 3 month period. This misconduct resulted in three separate alcohol-related instances, none of which resulted in any criminal conviction. The applicant's third incident was an alleged driving under the influence (DUI). At the time of the applicant's chapter proceeding, the DUI matter was still pending and was resolved on 13 April 2012, with a reduction to reckless driving after the applicant was separated from the U.S. Army. Prior to separation, the applicant only had about 7 days prior to their regular expiration of term of service (ETS). The applicant requested to be granted a probation period until their ETS or to be allowed to use 40 days of terminal leave in lieu of the chapter proceeding, however it was denied by the command. Counsel requests the Board to consider:

(1) The applicant was denied the opportunity to speak with the commander concerning the chapter proceeding. Per Army Regulation (AR) 600-20 (Army Command Policy), commanders shall establish an open door policy.

(2) The applicant was not afforded the right to complete the election form entitled "Separation Under AR 635-200 [Active Duty Enlisted Administrative Separations] Memorandum" which is intended to inform the applicant of their rights.

(3) The applicant compiled a comprehensive packet that contained letters from past noncommissioned officer (NCOs) which the applicant was not afforded the opportunity to submit, precluding this important information from being considered by the chain of command and the chapter board.

(4) According to AR 635-200, commanders are required to evaluate the entire period of service when deciding enlisted administrative separations and characterization of discharge. As previously mentioned, the applicant was chaptered out of the service based on three instances of misconduct during a 3 month period following return from a fourth combat deployment. As indicated above, there were no convictions stemming from the applicant's first two instances of misconduct. The third instance of misconduct involved a DUI. However, the DUI was reduced to reckless driving, which disposition was after separation. In this respect, the chain of command and board did not have knowledge of the non-DUI disposition.

(5) While on the applicant's fourth combat tour, the applicant was awarded for Valor. The applicant distinguished themselves by disregarding their own safety while under fire by maintaining the applicant's blocking position several times thus facilitating the evacuation of two fellow wounded soldiers. With senior leadership absent during this combat incident, the applicant also facilitated an entire platoon movement to an exfiltration helicopter landing zone. For the applicant's brave and selfless actions, the applicant was awarded the Army Commendation Medal with "V" device.

(6) The applicant sought evaluation for PTSD and substance abuse counseling. However, the applicant's command took insufficient action to obtain the necessary counseling, opting instead to seek discharge. There was lack of command emphasis on the adequate diagnosis, treatment, and counseling for PTSD, which would help to explain the period of alcohol misuse or abuse. It is evident the applicant was exhibiting behavior consistent with PTSD, and inconsistent with prior unblemished service. The command chose to seek discharge rather than support this then troubled soldier. In the end, the applicant's command did not uphold one of the U.S. Army's highest military traditions and values, taking care of its soldiers.

(7) The chapter board did not adequately weigh the applicant's previous dedication and service to our country. The applicant desires to obtain a college degree and apply for officer candidate school.

c. Board Type and Decision: In a records review conducted on 7 February 2024, and by a 5-0 vote, the Board, based on the circumstances surrounding the applicant's discharge (Post-Traumatic Stress Disorder), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 29 September 2011

c. Separation Facts: The applicant's AMHRR contains the case separation file. However, the applicant provided through counsel documents which are described below in 3c(1) through (3).

(1) Date of Notification of Intent to Separate: 3 August 2011

(2) Basis for Separation: The applicant was informed of the following reasons: On 24 December 2010, the applicant was arrested for disorderly conduct, on 6 February 2011, the applicant was arrested for obstruction of a law enforcement officer and public drunkenness, and on 18 March 2011, the applicant was charged with DUI of alcohol.

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

(4) Legal Consultation Date:

(a) Memorandum, Delay of Administrative Separation, 17 August 2011, reflects the acting senior defense counsel requested on behalf of the applicant to delay administrative separation procedures until 24 August 2011, in order to have an opportunity to meet with Major C__ who was on temporary duty at the time.

(b) Memorandum, Request for Delay to Exercise Rights under AR 635-200, paragraph 14-12b, 31 August 2011, reflects the applicant was advised of the right to consult civilian counsel. The applicant choose to speak with civilian counsel and requested seven additional duty days to consult civilian counsel and review the election of rights.

(c) Memorandum for Record, Election of Rights Refusal, 2 September 2011, reflects the applicant refused to sign the election of rights.

(d) Memorandum for Record, Separation under AR 635-200, Chapter 14, Paragraph 14-12b, Pattern of Misconduct, 2 September 2011, reflects the company commander denied the request to further delay the separation action stating the applicant was provided more than a reasonable time to consult with military and/or civilian counsel. The applicant was advised by military counsel at the Trial Defense Services (TDS) on at least two separate occasions: 17 and 31 August 2011. The company commander granted a delay to seek additional counsel after the applicant visited with TDS on 17 August 2011. Following the applicant's most recent consult; the applicant failed to complete the election of rights memorandum. Lastly, the applicant has had more than sufficient and reasonable time to seek counsel from the civilian attorney between 17 to 31 August 2011. The applicant's actions demonstrated a deliberate attempt to unnecessarily stall the chapter proceedings.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 September 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 June 2007 / 4 years and 19 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1V, Infantryman / 4 years, 3 months, and 24 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (6 July - 18 December 2010; 24 August - 16 December 2009; 4 January - 10 April 2008); Iraq (12 October 2008 - 25 January 2009)

f. Awards and Decorations: JSCOM, ARCOM-V, JSAM, AGCM, NDSM, ACM-2CS, GWOTSM, ICM-CS, ASR, OSR, CIB, EIB.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Provided by the applicant through counsel:

(a) Twenty monthly counselings from 2007 to January 2011 reflecting the applicant had great potential, satisfactory performance, took leadership roles, encouraged peers, and was selected for the sniper team.

(b) Release/Receipt, reflecting the applicant was charged with disorderly conduct on 25 December 2010.

(c) Developmental Counseling Form, 26 December 2010, reflecting the applicant was involved in an altercation with civilian locals involving alcohol, was arrested, and charged with disorderly conduct on 25 December 2010.

(d) Incident report that reflects the applicant was arrested for public intoxication and disorderly or indecent conduct on 6 February 2011.

(e) Developmental Counseling Form, 9 February 2011, reflecting the applicant was counseled for the alcohol related incident on 6 February 2011.

(f) Chatham County Sheriff's Department Uniform Booking Form, 18 March 2011, reflecting the applicant was arrested and charged with DUI, stop, stand, and park in prohibited spot.

(g) Receipt for Inmate or Detained Person, 18 March 2011, reflecting the applicant was charged with failure to stop and DUI.

(h) Developmental Counseling Form, 18 March 2011, reflecting the applicant was counseled for DUI and being arrested on 18 March 2011. The applicant was instructed to attend mandatory Army Substance Abuse Program (ASAP) meetings. On the same date the applicant's driving privileges were suspended.

(i) The applicant's sworn statement, 18 March 2011, reflects on the night of 17 March 2011, the applicant went downtown to celebrate St. Patrick's day. After the applicant left the bars around 3am, the applicant walked around until the applicant found their truck and sat on the driver's side and fell asleep. The applicant woke up to a police officer knocking on the window and was then issued a breathalyzer and was arrested and taken to the police department.

(2) General Officer Memorandum of Reprimand (GOMOR), 24 March 2011, reflects the applicant was driving while under the influence of alcohol.

(3) Provided by the applicant through counsel:

(a) Memorandum, Community Service of Applicant, 25 March 2011, reflecting the applicant completed 40 hours or more volunteer or community service.

(b) On 28 March 2011, the applicant Successfully completed a Victims Impact Panel program.

(c) On 12 May 2011, the applicant completed the Prime for Life program.

(d) ASAP Outpatient Discharge Summary, 20 May 2011, reflecting the applicant was diagnosed with alcohol abuse, however upon completing the Prime for Life Training;

participation in phase one and phase two outpatient groups; and abstaining from any mind altering drugs, the applicant was no longer diagnosed with alcohol abuse based on the applicant's ability to remain abstinent during the period of 17 March to present.

(e) ASAP certificate, 25 May 2011, reflecting the applicant completed outpatient treatment 20 May 2011.

(f) Developmental Counseling Form, 8 June 2011, reflecting the applicant would be recommended for a chapter 14-12b, pattern of misconduct. The applicant disagreed with no comment.

(g) The two letters of support speak highly of the applicant while serving the Army. They requested leniency or an honorable discharge because of the applicant's selfless service to the Army and what the applicant suffered with after combat.

(h) Columbia College letter, 1 September 2011, reflecting the applicant was a full time student pursuing an Associate degree in general studies.

(i) On 7 September 2011, the applicant requested to be granted a probation period until their ETS on 16 October 2011 or be allowed to use 40 days of terminal leave on or after 7 September 2011 and be discharged at the applicant's ETS.

(4) Memorandum for Record, Separation Under AR 635-200, Chapter 14-12b (Pattern of Misconduct), 7 September 2011, reflects the separation packet was found legally sufficient.

(5) Counsel provided:

(a) An email that counsel sent to the separation authority on 21 September 2011, requesting the applicant be given an honorable discharge with RE code 1 or 2 to allow for reentry in the military.

(b) Uniform Traffic Citation, Summons, Accusation/Warning, 13 April 2012, reflecting the applicant completed all conditions (12 months' probation, \$500 fine and cost, 40 community service hours, DHR risk reduction, victim impact panel, and alcohol treatment as recommended), and the probation was suspended for the 18 March 2011 DUI. Also, reflects less safe offense and under remarks reckless driving.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:**

(a) United States Army medical Department Activity letter, 18 February 2011, reflecting the applicant was evaluated in the Behavioral Medicine Clinic and screened for PTSD with negative results and no other clinical diagnosis.

(b) Report of Mental Status Evaluation, 29 July 2011, reflects 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 had been screened for PTSD and mild TBI with positive results for PTSD. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions, if present, when determining final disposition. The applicant was diagnosed with adjustment disorder.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Legal Brief; Enlisted Record Brief; two letters of support; partial case separation packet; ASAP documents; copies of military personnel records.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has completed 3 years of college credits.

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. AR 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. AR 600-20 (Army Command Policy) states commanders will establish an open door policy within their commands. Soldiers are responsible to ensure that the commander is made aware of problems that affect discipline, morale, and mission effectiveness; and an open door policy allows members of the command to present facts, concerns, and problems of a personal or professional nature or other issues that the Soldier has been unable to resolve. The timing, conduct, and specific procedures of the open door policy are determined by the commander. They are responsible for ensuring that Soldiers are aware of the command's open door policy.

e. AR 635-200 provides the basic authority for the separation of enlisted personnel.

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

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

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

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

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

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

- waive their rights

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

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian 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 Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

f. AR 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "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. AR 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

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

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

a. The applicant requests an upgrade to honorable. 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 4 years, 3 months, and 24 days during which the applicant served 1 year, 3 months, and 27 days between four deployments in Afghanistan and Iraq in 2008, 2009, and 2010. The applicant received a GOMOR for driving while under the influence of alcohol. The applicant was discharged with a general (under honorable conditions) characterization of service on 29 September 2011.

c. The applicant through counsel contends, in effect,

(1) The applicant was denied the opportunity to speak with the commander concerning the chapter proceeding. Per AR 600-20 (Army Command Policy), commanders shall establish an open door policy. The applicant did not provide and the AMHRR does not contain a request or denial to use the open door policy.

(2) The applicant was not afforded the right to complete the election form entitled "Separation Under AR 635-200 Memorandum" which is intended to inform the applicant of their rights. The applicant's AMHRR contains Memorandum for Record, Election of Rights Refusal, 2 September 2011, reflects the applicant refused to sign the election of rights.

(3) The applicant compiled a comprehensive packet that contained letters from past NCOs which the applicant was not afforded the opportunity to submit, precluding this important information from being considered by the chain of command and the chapter board. The chapter board did not adequately weigh the applicant's previous dedication and service to our country. The two letters of support speak highly of the applicant while serving the Army. They requested leniency or an honorable discharge because of the applicant's selfless service to the Army and what the applicant suffered with after combat. In addition, the applicant provided through counsel copies of their military records including awards, completed military school certificates, and monthly performance counselings. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

(4) Per AR 635-200, commanders are required to evaluate the entire period of service when deciding enlisted administrative separations and characterization of discharge. As previously mentioned, the applicant was chaptered out of the service based on three instances of misconduct during a 3 month period following return from a fourth combat deployment. As indicated above, there were no convictions stemming from the applicant's first two instances of misconduct. The third instance of misconduct involved a DUI. However, the DUI was reduced to reckless driving, which disposition was after separation. In this respect, the chain of command and board did not have knowledge of the non-DUI disposition. Counsel provided, Uniform Traffic Citation, Summons, Accusation/Warning, 13 April 2012, reflecting the applicant completed all conditions (12 months' probation, \$500 fine and cost, 40 community service hours, DHR risk reduction, victim impact panel, and alcohol treatment as recommended), and the probation was suspended for the 18 March 2011 DUI. Also, reflects less safe offense and under remarks reckless driving.

(5) The applicant sought evaluation for PTSD and substance abuse counseling. However, the applicant's command took insufficient action to obtain the necessary counseling, opting instead to seek discharge. There was lack of command emphasis on the adequate

diagnosis, treatment, and counseling for PTSD, which would help to explain the period of alcohol misuse or abuse. It is evident the applicant was exhibiting behavior consistent with PTSD, and inconsistent with prior unblemished service. The command chose to seek discharge rather than support this then troubled soldier. The applicant through counsel provided U.S. Army Medical Department Activity letter, 18 February 2011, reflecting the applicant was evaluated in the Behavioral Medicine Clinic and screened for PTSD with negative results and no other clinical diagnosis. Report of Mental Status Evaluation, 29 July 2011, reflects the applicant was screened positive with PTSD. The applicant was diagnosed with adjustment disorder.

d. Analyst notes block 12f (Foreign Service) of the applicant's DD Form 214 has administrative irregularities as follows:

(1) Block 12f (Foreign Service), does not reflect foreign service credit for the for four deployments the applicant completed.

(2) AR 635-5, states from the enlisted record brief, enter the total amount of foreign service completed during the period covered in block 12c (Net Active Service this Period).

(3) This does not fall within this Board's purview; however, the applicant may apply to the ABCMR, using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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 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: Adjustment Disorder; Post-Traumatic Stress Disorder. [Note-diagnosis of Adjustment Disorder is subsumed under diagnosis of Post-Traumatic Stress Disorder].

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for Post-Traumatic Stress Disorder establishes that the condition occurred and/or began during active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating Behavioral Health condition, Post-Traumatic Stress Disorder. As there is an association between Post-Traumatic Stress Disorder and use of alcohol to self-medicate emotional symptoms, there is a nexus between the applicant's diagnosis of Post-Traumatic Stress Disorder and the applicant's alcohol-related misconduct to include the applicant's driving under the influence and obstruction of justice charge.

(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 Post-Traumatic Stress Disorder outweighed the driving under the influence and obstruction of justice charge basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, the applicant was denied the opportunity to speak with the commander concerning the chapter proceeding. Per AR 600-20 (Army Command Policy), commanders shall establish an open door policy. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's driving under the influence and obstruction of justice charge basis for separation.

(2) The applicant through counsel contends, in effect, the applicant was not afforded the right to complete the election form entitled "Separation Under AR 635-200 Memorandum" which is intended to inform the applicant of their rights. The applicant's AMHRR contains Memorandum for Record, Election of Rights Refusal, 2 September 2011, reflects the applicant refused to sign the election of rights. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's driving under the influence and obstruction of justice charge basis for separation.

(3) The applicant through counsel contends, in effect, the applicant compiled a comprehensive packet that contained letters from past NCOs which the applicant was not afforded the opportunity to submit, precluding this important information from being considered by the chain of command and the chapter board. The chapter board did not adequately weigh the applicant's previous dedication and service to our country. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's driving under the influence and obstruction of justice charge basis for separation.

(4) The applicant through counsel contends, in effect, per AR 635-200, commanders are required to evaluate the entire period of service when deciding enlisted administrative separations and characterization of discharge. As previously mentioned, the applicant was chaptered out of the service based on three instances of misconduct during a 3 month period following return from a fourth combat deployment. As indicated above, there were no convictions stemming from the applicant's first two instances of misconduct. The third instance of misconduct involved a DUI. However, the DUI was reduced to reckless driving, which disposition was after separation. In this respect, the chain of command and board did not have knowledge of the non-DUI disposition. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's driving under the influence and obstruction of justice charge basis for separation.

(5) The applicant through counsel contends, in effect, the applicant sought evaluation for PTSD and substance abuse counseling. However, the applicant's command took insufficient action to obtain the necessary counseling, opting instead to seek discharge. There was lack of command emphasis on the adequate diagnosis, treatment, and counseling for PTSD, which

would help to explain the period of alcohol misuse or abuse. It is evident the applicant was exhibiting behavior consistent with PTSD, and inconsistent with prior unblemished service. The command chose to seek discharge rather than support this then troubled soldier. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's driving under the influence and obstruction of justice charge basis for separation.

(6) The applicant through counsel contends, in effect, the applicant sought evaluation for PTSD and substance abuse counseling. However, the applicant's command took insufficient action to obtain the necessary counseling, opting instead to seek discharge. There was lack of command emphasis on the adequate diagnosis, treatment, and counseling for PTSD, which would help to explain the period of alcohol misuse or abuse. It is evident the applicant was exhibiting behavior consistent with PTSD, and inconsistent with prior unblemished service. The command chose to seek discharge rather than support this then troubled soldier. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Post-Traumatic Stress Disorder mitigating the applicant's driving under the influence and obstruction of justice charge misconduct.

c. The Board determined, based on the circumstances surrounding the applicant's discharge (Other Behavioral Health diagnoses), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post-Traumatic Stress Disorder mitigated the applicant's misconduct of driving under the influence and obstruction of justice charge. Thus, the prior characterization is no longer appropriate.

(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 / Separation Order: 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008908

Authenticating Official:

2/14/2024



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