

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 19 February 2021
- b. **Date Received:** 9 March 2021
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is Bad Conduct discharge. The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, they had untreated chronic Posttraumatic Stress Disorder, Anxiety, and injury due to war late effects from 15 October 2003, when they deployed to Iraq. A review of the applicant's clemency statement provides they were appreciative of the waiver of pay forfeitures (November 2005 – May 2006), which has been a blessing for their family and peace of mind for them, while they were incarcerated. The applicant has done everything possible to improve themselves by actively participating in anger management, attending weekly PTSD group meetings, and has been diagnosed with PTSD, under the care of the Brig social worker and the Naval mental health doctor.

(1) Along with PTSD, the applicant was treated for Depression and Anxiety, prescribed three medications, to include Ambien (sleep aid), Paxil (antidepressant), and [Klonopin] (anxiety control). The applicant felt they were finally returning to the person they were several years ago. They were actively employed in the Brig, since early December [2005], first as a project worker in the wood working shop, responsible for retirement boxes and shadow boxes. Recently, they were moved to the brig laundry room where they serviced over 250 inmates daily. Both of these positions were generally held for long term prisoners, but their spotless personal reports made them available for the jobs.

(2) The applicant has taken full advantage of education there, as Coastal Carolina Community College offered courses for continuing adult education. The applicant has completed the MS Office certification course consisting of four individual modules. They were enrolled in an A+/PC repair course, with the first two modules passed, they were still waiting on those certificates. The Marine Corps offered a spiritual growth/self-reflection retreat called Credo, in which they have attended and completed the first Credo for 2006. Along with this, the applicant has been very active with their weekly church service, having volunteered to participate in the service each week. The applicant planned to re-affirm their faith the following week, through baptism.

(3) All of the different treatments and progress have led them to be a better person. They have had zero negative marks of any kind, while incarcerated, in which the staff knows them by name, for the positive aspects. With good behavior, the applicant had earned eight additional days off of their sentence. The applicant and their spouse have made great strides in repairing their marriage. The diagnosis of PTSD and other problems, led to the majority of the applicant's problems. They both are in agreement on trying to make their marriage work. Their two oldest children at an age where both parents are needed, especially the discipline a father gives.

(4) Their children have suffered enough, as a result of this whole situation and the applicant wanted the opportunity to make things up to them, as the kids were in need of the applicant's support and love. Also, the time for their mandatory support from the military was nearly up and the applicant was asking for any grace period in shortening their sentence. Their discharge was important to the applicant but will not hinder their future employment. They asked for six months or 90-day reduction, to be there when the pay runs out to support their family. The applicant did not more hardships than they had at the time.

(5) Over the past two months, they have been contacting employers with very good response, in which most were comparable to their sergeant pay with benefits. If the applicant chose to, their parents were going to help them get into any type of position for the county, as they are both retired deputies and county employees. The applicant is thankful for their incarceration because it forced them to get the help they needed, to reevaluate themselves and now, they have new goals and desires for themselves and their family. The applicant states they are not proud of what they have done, nor do they condone their behavior and if they could go back, they would do things very different. The things they have learned though, will allow the applicant to prosper in the civilian world, entering back into the world to do their best.

**c. Board Type and Decision:** In a records review conducted on 26 July 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD) which partially mitigated the applicant's misconduct. The applicant's PTSD mitigated missing movement and disobeying an order from a superior commissioned officer. The misconduct of false official statement was mitigated by the applicant's length, quality of service and combat. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code 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:** Court-Martial, Other / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

**b. Date of Discharge:** 12 December 2008

**c. Separation Facts:**

**(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** A Special Court-Martial Order Number 10, dated 26 April 2006, provides the applicant was found guilty, in violation of Articles 87, 90, 107, and 134 of the UCMJ.

**(2) Adjudged Sentence:** Reduction to the grade of E-1 (PVT); forfeit \$822.00 pay per month for 12 months; to be confined for 12 months, and to be discharged from the service with a Bad-Conduct discharge.

**(3) Date Sentence Approved:** 26 April 2006, except for that part of the sentence extending to a bad-conduct discharge, will be executed. The automatic forfeiture of \$822 pay per month, as required by Article 58b, UCMJ, has been waived effective 21 November 2005 – 20 May 2006, with direction that these funds be paid to the [spouse] of the accused.

**(4) Appellate Review:** On 18 March 2006, the Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

**(5) Date Sentence of BCD Ordered Executed:** 17 July 2008

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 28 April 2003 / 4 years

**b. Age at Enlistment / Education / GT Score:** 32 / High School Diploma / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 63B10 Wheeled Vehicle Mechanic / 13 years, 5 days

**d. Prior Service / Characterizations:** RA (2 March 1995 – 27 April 2003) / HON

**e. Overseas Service / Combat Service:** None

#### **f. Awards and Decorations:**

**(1)** Listed on their DD Form 214:

- (a)** USA/USAF Presidential Unit Citation
- (b)** National Defense Service Medal
- (c)** Armed Forces Expeditionary Medal
- (d)** Global War on Terrorism Service Medal

**(2)** The Staff Judge Advocate's (SJA) post-trial recommendations lists their awards and the following are missing from the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty):

- (a)** Army Service Ribbon
- (b)** National Defense Service Medal
- (c)** Global War on Terrorism Expeditionary Medal
- (d)** Army Commendation Medal (Two)
- (e)** Army Achievement Medal (Six)
- (f)** Kuwait Liberation Medal (Two)
- (g)** Non-Commissioned Officer Professional Development Ribbon
- (h)** Overseas Service Ribbon
- (i)** NATO Medal
- (j)** Army Good Conduct Medal (Three)
- (k)** Humanitarian Service Medal
- (l)** Drivers Badges (Track and Wheel)

**g. Performance Ratings:** SGT (1 February 2004 – 31 January 2005) / Among the Best

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

(1) On 28 April 2003, the applicant completed their third reenlistment for 4 years as an SGT, with 8 years, 3 month, and 22 days of total prior service.

(2) On 7 November 2005, the applicant was found guilty in a special court-martial, of the following charges: two specifications of Article 87, UCMJ: On or about 15 – 16 April 2005, through design, missed movement of the 3d Unit of Action (Rear), 3d Infantry Division, Fort Benning, Ga, with which [they were] required in the course of duty to move. On or about 16 – 17 May 2005, through design, missed the movement of the 3d Unit of Action (Rear), 3d Infantry Division, Fort Benning, Ga, with which [they were] required in the course of duty to move.

(a) Article 90: On or about 12 – 20 May 2005, willfully disobeyed a lawful command from CPT C.V., known by the accused to be [their] superior commissioned officer, to report to the manifest site on or about 16 May and 17 May, to deploy with [their] unit to Iraq.

(b) Article 107: On or about 15 – 16 April 2005, with intent to deceive, made a false official statement to MSG T.K.J. and CPT C.V., to wit: “I don’t know the whereabouts of my [spouse], [they] took one of my kids, and [they] left me with the two other kids,” or words to that effect, which statement was false in that the accused knew [their spouse] was at a friend’s house, knew that [they were] leaving with their child, and knew [they were] going to the friend’s house that evening, and was then known by the accused to be so false.

(c) Article 134: On or about 20 April 2005, in a sworn statement, wrongfully and unlawfully made under lawful oath a false statement in substance as follows: that the accused does not know the whereabouts of [their spouse] at that time and that [their spouse] has not told [the accused] where to find [the spouse], or words to that effect, which statement [the accused] did not then believe to be true.

(d) They were sentenced to reduction to PVT, forfeiture of \$822 pay per month for 12 months, to be confined for 12 months, and to be discharged from the service with a Bad-Conduct discharge. The sentence was approved, except for that part of the sentence extending to a bad-conduct discharge, will be executed. The automatic forfeiture of \$822 pay per month, as required by Article 58b, UCMJ, has been waived effective 21 November 2005 – 20 May 2006, with direction that these funds be paid to the [spouse].

(3) On 7 November 2005, the applicant’s duty status changed from “Present for Duty” to “Confined Military Authorities.”

(4) A Brig Progress Report, dated 7 April 2006, provides the applicant’s adjustment has been outstanding in nature; they have received 17 outstanding, 17 above average, and one average work and training reports; they have received three positive spot evaluations, no negative spot evaluations, and disciplinary reports.

(5) On 19 April 2006, defense counsel requested clemency IAW R.C.M. 1105, for the applicant, requesting confinement in excess of six months, be disapproved. On 8 November 2005, the applicant plead not guilty to numerous violations of the UCMJ

related to their impending deployment with their unit to Iraq. While their plea was not guilty to all charges and specifications, the applicant chose to take accountability for their actions on the stand in front of a panel based on counsel's advice, which was quite unorthodox. The panel returned a verdict of guilty on all charges and specifications, as expected, but sentenced the applicant to the jurisdictional maximum permitted for a special court martial empowered to adjudge a bad conduct discharge (BCD).

(a) Before that court martial, defense counsel asked the applicant about their desired end state before the applicant went to court-martial. The applicant stated that they wanted to remain in the Army and deploy to Iraq. While the OSJA was offering to support six months confinement to plead guilty and request a forum of the military judge alone, counsel informed the applicant that if they took that deal, then it was almost certain that they would receive a punitive discharge and six months confinement. Knowing the possibility that the applicant could face 12 months confinement and a BCD by not taking the deal, the applicant told counsel that they wanted a chance to redeem themselves and stay in the Army, so counsel informed the SJA's office that the applicant would be pleading not guilty in front of an enlisted panel.

(b) The applicant is in jail today because they made bad choices over a month's period of time. While they chose to take a chance and follow counsel's advice in order to stay in the Army, the panel made it clear that the applicant is no longer wanted in the Army. After the court martial, the applicant has hit rock bottom but while looking into the abyss, the applicant chose to improve themselves, which has caused their spouse to consider reconciliation. Counsel states there are parts of the applicant that they missed during trial, such as counsel had no idea that the applicant suffered from PTSD, which could have affected their sentence. However, the applicant has addressed this affliction in prison, which has caused their relationship with their spouse to be amended to the point where they will begin marriage counseling upon the applicant's release. Moreover, the applicant has taken every opportunity to improve themselves while incarcerated.

(c) Out of all of the counsel's clients for whom they have requested clemency, the applicant is the client who is the most deserving and has the best reasons for requesting clemency. The only reason the applicant is in jail for 12 months is based on counsel's advice; otherwise, the applicant would have accepted the six-month deal and plead guilty in front of the judge. Had they taken the deal, the applicant would be currently out of prison. Also, their young children need their father home as soon as possible. Finally, while a generous waiver of automatic forfeitures was previously granted that should have extended through May 2006, the applicant had received no pay due for the past two months. The applicant needs to work so that they may be able to provide for their family.

(6) On 26 April 2006, the staff judge advocate provided an addendum to the applicant's post-trial recommendation to the commander in reference to the applicant's Posttraumatic Stress Disorder (PTSD) diagnoses and a letter from the counselor, along with other supporting documentation. The SJA indicated there was no allegation of legal error in the request for clemency submitted by the defense and in their opinion, none was committed. The SJA determined clemency was not warranted in this case; however, forwarded to the convening authority for final approval. On the same day, the request for clemency was denied. Additionally, a partial document listing the applicant's summary of record, indicates the applicant had no previous nonjudicial punishments or prior convictions.

(7) On 13 August 2006, the applicant's duty status changed from "Confined Military Authorities" to "Present for Duty."

(8) On 5 December 2008, their separation orders were issued. A DD Form 214 reflects the applicant was discharged accordingly on 12 December 2008, with 13 years, 2 months, and 1 day of total service. The applicant completed their first full term of service and was unavailable for signature. The remarks section provides, "Separated from service on temporary records and Soldier's Affidavit/DD Form 215 will be issued to provide missing information/Excess leave (Creditable for all purposes except pay and allowances) –853 days: [13 August 2006 – 12 December 2008]."

**i. Lost Time / Mode of Return:** 9 months, 6 days; CMA (7 November 2005 – 12 August 2006) Released from Confinement

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

(1) **Applicant provided:** A letter from the United States Marine Corps (USMC) Brig Clinic, NC, dated 30 March 2006, the clinical social worker provided the applicant had done well in the facility, as they were attending the rehabilitation and Posttraumatic Stress Disorder (PTSD) group, working on making their family whole and making themselves a productive person again. The provider was in support of the applicant's request for clemency, as the applicant was well ready to make the move to their next phase of life. The provider provided the applicant with a letter explaining PTSD diagnosis and indicated following up with the VA is vital.

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Application for the Review of Discharge); Request for Clemency IAW R.C.M. 1105, [the applicant] Memorandum; Clinical Social Worker's Letter; Certificate of Basic Course Completion in Personal Growth; Five Course Enrollments from Coastal Carolina Community College

**a.** On 4 April 2006, the spouse's sworn statement, provides the couple has had their fair share of difficulties over the past few years. A little less than a year ago, the couple was on the verge of divorce, as their marriage was in a great deal of trouble and did not have a very positive future. The spouse did not like or want the applicant as a person, as a spouse, or as a father to their children, as the applicant was going down a path of self-destruction and was slowly taking their family with them. The applicant made some very poor choices and has suffered the consequences of their actions by having nearly lost their family, ruined their military career, and has spent the last few months in the Brig at Camp Lejeune, NC.

(1) The spouse earnestly stated that the applicant's confinement has changed them into a better person, having admitted to the bad choices they have made and making great effort to be a good person again. The applicant was able to have their PTSD documented, finally having received the mental help the spouse has asked them, along. For the first time in over a year, the spouse likes the applicant and felt positive about their future together, as a couple and as a family, believing they have a real shot at being a family again, which is what the spouse wanted more than anything. Their family has dealt with a great deal, the past few months and the spouse has learned that they are stronger than they ever believed they were.

(2) The spouse has done their best at trying to be both parents to their children, having done everything they could to keep our family together and whole. But, despite all their effort, something has been missing. The missing piece is the applicant; the family needs them home and they need to be a family again. The applicant has job opportunities there and the sooner they can get home, the sooner the applicant can find a job. Considering the applicant's pay has not been right for the past two months, they have really been struggling financially. The applicant's being home and having a civilian job, would be very beneficial to us right now, because they need more income. The spouse has looked for a job and they have not had much success.

(3) Taking care of their children has been their top priority and if the applicant was there with the spouse, it would make their family situation better, as it is hard to go to couples therapy when one part of the couple is missing. They are trying to make their marriage better and there is only so much they can do in the limited communication that they have. The spouse wanted/needed the applicant home as it was hard being both parents to their children who needed the applicant, as well as the applicant needed the opportunity to be a good role model to them again. The applicant was a good person once and is working very hard to be that again, to the people the applicant has hurt. The spouse understands the applicant was incarcerated for a reason and sentenced to the amount of time for a reason.

b. The applicant's parents and siblings contends, the applicant's love for the military and pride of the uniform they wore, which was the applicant's life ambition and niche; wished to make amends with their family and to the Army, who they felt they "let down";

(1) During their detention, each letter received from the applicant was more positive than the last...detailed reports of the applicant's accomplishments...therapy and medical treatment, the classes they were attending, and most of all, their return to their Christian upbringing;

(2) It was evident that [the applicant] was humbled and repenting for their mistakes, with no bitterness or hostility towards anyone...most promising change was the applicant's demeanor, as the applicant was someone [they] looked forward to being around.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has been treated for their PTSD and successfully managing their symptoms with medications. They participated in PTSD group therapy and anger management. The applicant completed a Personal Growth basic course and five courses with Coastal Carolina Community College (Computer Troubleshooting Introduction; MS Excel 2000 Introduction – Advanced; MS Word 2000 Intro – Advanced; MS Access 2000 Intro – Advanced; and MS PowerPoint 2000 Introduction – Advanced).

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for

discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

**c.** Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any



Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

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

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

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

**(4)** Chapter 3 establishes policy and procedures for separating members with a dishonorable or bad conduct discharge; and provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial; and that the appellate review must be completed and the affirmed sentence ordered duly executed. Because relevant and material facts stated in a court-martial specification are presumed by the ADRB to be established facts, issues relating to the applicant's innocence of charges for which [they] were found guilty, cannot form a basis for relief.

**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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial, Other.

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

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

other criteria are met.

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

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

**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 DD Form 214 provides the applicant received a Bad Conduct discharge, which is considered appropriate for a Soldier found guilty by a Special-Court Martial.

b. Based on the available evidence the applicant completed their third reenlistment as an SGT, with 8 years, 3 months, and 22 days of total prior service. The applicant was rated among the best in their NCOER with no record of indiscipline, prior to having been found guilty by a Special Court-Martial and the sentence was approved by the convening authority; as a result, they were sentenced to 12 months, demoted to PVT, and was required to forfeit \$822 for one year, although six months of the forfeiture went to their family instead. Defense counsel requested clemency on behalf of the applicant, for their sentence not to exceed six months; however, it was disapproved, and they served a nine-month sentence. A properly constituted DD Form 214 provides applicant was discharged under the provisions of AR 635-200, Chapter 3, Court-Martial (Other), with a Bad Conduct characterization of service.

(1) They served 2 years, 6 months, and 17 days of their 4-year contractual obligation, prior to the misconduct, which led to their discharge.

(2) The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency to moderate the severity of the punishment imposed.

c. Chapter 3 establishes policy and procedures for separating members with a dishonorable or bad conduct discharge; and provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial; and that the appellate review must be completed and the affirmed sentence ordered duly executed. Because relevant and material facts stated in a court-martial specification are presumed by the ADRB to be established facts, issues relating to the applicant's innocence of charges for which [they] were found guilty, cannot form a basis for relief.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

**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: Post Traumatic Stress Disorder (PTSD) chronic. Note-diagnosis of Anxiety Disorder Not Otherwise Specified is subsumed under diagnosis of PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant was diagnosed with PTSD while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a Behavioral Health condition, Post Traumatic Stress Disorder (PTSD), which mitigates some of the applicant's misconduct. As there is an association between PTSD, avoidant behavior and difficulty with authority figures, there is a nexus between the applicant's diagnosis of PTSD, missing movement and disobeying an order from a superior commissioned officer. PTSD does not mitigate making a false official statement as it does not affect one's ability to distinguish right from wrong and act in accordance with the right. Note-Anxiety Disorder Not Otherwise Specified diagnosis is subsumed under PTSD diagnosis.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): The applicant seeks relief contending an Honorable discharge as they had untreated chronic Post Traumatic Stress Disorder, Anxiety, and injury due to war, late effects from 15 October 2003, when they were deployed to Iraq. The Board determined that this contention was valid and voted to upgrade the characterization of service to Honorable.

(1) The applicant seeks relief contending an Honorable discharge as they had untreated chronic PTSD, Anxiety, and injury due to war, late effects (15 October 2003), from their Iraq deployment. This led to the majority of the applicant's problems. The Board determined that this contention was valid and voted to upgrade the characterization of service to Honorable.

(2) The applicant contends, [while in the brig] along with their PTSD, the applicant was treated for Depression and Anxiety, prescribed three medications, to include Ambien (sleep aid), Paxil (antidepressant), and [Klonopin] (anxiety control). The applicant felt they were finally returning to the person they were several years ago. The Board determined that this contention was valid and voted to upgrade the characterization of service to Honorable.

(3) The applicant contends their treatment and progress has led the applicant to be a better person...giving them new goals and desires for themselves and their family. They took full advantage of the education while in the brig, having received various

certificate for self-enrichment and MS Office certifications. The Board considered this contention and voted to upgrade the applicant's characterization to Honorable.

**c.** The parents and siblings contend the applicant has accepted responsibility for their actions and received the help they needed; the Army was the applicant's life ambition and was the best choice they made; and the applicant was back to themselves with a more positive demeanor, having returned to the Christian faith; they requested clemency in order for the applicant to return to their family to provide them with a better life. The Board considered this contention and voted to upgrade the characterization of service to Honorable.

**d.** The Board voted to change the applicant's characterization of service to Honorable based on the applicant's PTSD and the applicant's length and quality of service, to include combat service, mitigated the basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code was proper and equitable and voted not to change it.

**e.** Rationale for Decision:

**(1)** The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of missing movement and disobeying an order from a superior commissioned officer. The applicant's length and quality of service, to include combat service, mitigated the remaining misconduct of false official statement. 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 reasons, 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:**

8/8/2024



**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