- 1. Applicant's Name:
 - a. Application Date: 12 April 2021
 - b. Date Received: 12 April 2021
 - 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 (under honorable conditions). The applicant requests an upgrade to honorable and a change of their narrative reason for separation.

(2) The applicant seeks relief stating they were discharged for adultery. They were told by multiple people in their leadership that as long as they were in mutual agreement and getting a divorce, which they were, it would be fine to move on with someone else before the divorce was final. When they presented the evidence that their leadership was aware of their upcoming divorce and their current spouse was also seeing someone else, which they had proof during that time, as their spouse told them; it was disregarded and they were the only one charged with adultery. Being marked as an adulterer and other slurs by fellow service members and leadership during this time does not describe their character and they feel as though they were not treated as an equal to their spouse at that time.

b. Board Type and Decision: In a records review conducted on 18 September 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Intimate Partner Violence (IPV) resulting in PTSD outweighed the applicant's basis of separation - wrongful engagement in extramarital conduct with a person who was not their spouse and failure to obey a superior commissioned officer. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's Behavioral Health (BH) diagnosis warranting consideration prior to reentry of military service.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

- b. Date of Discharge: 18 August 2020
- c. Separation Facts:
 - (1) Date of Notification of Intent to Separate: 17 June 2020

(2) Basis for Separation: on 4 November 2019, wrongfully engaged in extramarital conduct with a person who was not their spouse and on 8 November 2019, failed to obey a superior commissioned officer.

- (3) Recommended Characterization: General (Under Honorable Conditions)
- (4) Legal Consultation Date: 30 June 2020
- (5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 July 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment: 7 January 2019/ 3 years, 22 weeks
- b. Age at Enlistment / Education / GT Score: 21 / HS Graduate / 123

c. Highest Grade Achieved / MOS / Total Service: E-2 / 74D1O, Chemical Operations Specialist / 1 year, 7 months, 12 days

- d. Prior Service / Characterizations: None
- e. Overseas Service / Combat Service: None
- f. Awards and Decorations: NDSM, GWTSM, ASR
- g. Performance Ratings: NA
- h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Directorate of Emergency Services, subject: Law Enforcement Report – 1st Corrected Final, dated 16 December 2019, reflects the applicant as the named subject with the offenses of violations of Article 81 (Conspiracy – Person Offenses), Uniform Code of Military Justice (UCMJ); Article 107 (False Official Statement), UCMJ; and Article 134 (Extramarital Sexual Conduct), UCMJ. The Report Summary reflects –

(a) On 4 November 2019, the applicant report a physical domestic, who stated they and their spouse, Private First Class (PFC) J___ K___, were involved in a verbal altercation which turned physical when their spouse grabbed them by their arms and shook them. Specialist (SPC) J___ B___ they grabbed PFC K___ by the arm and punched PFC K___ in the face multiple times causing a broken nose and multiple contusions. PFC K____ admitted to grabbing the applicant by the arms but insists it was not in an aggressive manner. PFC K____ stated that the applicant and SPC B____ were in a physical relationship. PFC K____ came home and found them sexual engaged which caused the domestic. Upon examination of material on both cell phones of the applicant and SPC B____, they both confessed to having a physical relationship, and that SPC B____ was in fact living in the home with the applicant and their spouse.

(b) On 9 December 2019, Captain S____, Trial Counsel, Fort Irwin, CA, opined there is sufficient evidence to establish probable cause exists to believe the applicant committed the offenses of Article 81 (Conspiracy), Article 107 (False Official Statement) and Article 134 (Adultery).

(2) A DA Form 4856 (Developmental Counseling Form) dated 11 February 2020, reflects the applicant received event oriented counseling to notify them of a Report to Suspend

Favorable Personnel Action (Flag) from Law Enforcement to Adverse Actions and Involuntary Separation and recommendation for UCMJ action. The Key Points reflects the Law Enforcement investigation has been completed and there was evidence that the applicant was involved in an extramarital sexual conduct, conspiracy, and false official statement. Due to the seriousness of these offenses they are being recommended for UCMJ and Involuntary Separation from the Army. The applicant agreed with the information and signed the form.

(3) A DA Form 3822 (Report of Mental Status Evaluation) dated 1 May 2020, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retention standards. Section IV (Diagnoses) reflects the applicant has no behavioral health diagnoses. The behavioral health provider commented the applicant is cleared, from a behavioral health standpoint, for administrative separation at this time.

(4) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 6 May 2020 reflects the applicant received nonjudicial punishment for having received a lawful command from their superior commissioned officer, to stay away and out of SPC B_____'s residence and maintain at least 300 meters distance at all times, did, on or about 8 November 2019, willfully disobeyed the same, in violation of Article 90 (Willfully Disobeying Superior Commissioned Officer), UCMJ; and in than, as a married person, did, on or about 4 November 2019, wrongfully engaged in extramarital conduct, to wit: sexual activity with SPC B____, a person they knew was not their spouse, and that such conduct was to the prejudice of good order and discipline in the Armed Forces, in violation of Article 134, UCMJ. Their punishment consisted of reduction in rank/grade of private two/E-2 to private/E-1, forfeiture of \$866.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(5) A memorandum, Headquarters and Headquarters Troop, 2nd Squadron, 11th Armored Cavalry Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 17 June 2020, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for misconduct as described above in paragraph 3c(2). On the same day, the applicant acknowledged receipt of notification for separation and of the rights available to them.

(6) On 30 June 2020, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separate them, and its effects and of the rights available to them. They elected not to submit statements in their behalf and elected to waive consulting counsel. They understood they many expect to encounter substantial prejudicial in civilian life if a general (under honorable conditions) discharge is issued to them.

(7) A memorandum, Headquarters and Headquarters Troop, 2nd Squadron, 11th Armored Cavalry Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 8 July 2020, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant has a character and integrity flaw, they do not posses potential for future service, and it is in the best interest in the military to separate them.

(8) A memorandum, Headquarters, 11th Armored Cavalry Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 8 July 2020, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service, their service be characterized as General (Under Honorable Conditions). After

reviewing the rehabilitative transfer requirements the commander determined the requirements do not apply to this action.

(9) On 18 August 2020, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 1 year, 7 months, and 12 days of net active service this period and did not complete their first full term of service obligation. Their DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) Private Two
- item 4b (Pay Grade) E-2
- item 12i (Effective Date of Pay Grade) 7 July 2019
- item 24 (Character of Service) General (Under Honorable Conditions)
- item 26 (Separation Code) JKQ
- item 27 (Reentry Code) 3
- item 28 (Narrative Reason for Separation) Misconduct, (Serious Offense)
- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s): None
- 5. APPLICANT-PROVIDED EVIDENCE: None submitted with the application.
- 6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.
- 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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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 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. 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. Paragraph 14-12c (Commission of a Service Offense), stated a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 (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.

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

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instruction 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. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows

the maximum punishments include punitive discharge for violating the following Article 81 (Conspiracy – Person Offenses), Article 107 (False Official Statement), and Article 134 (Extramarital Sexual Conduct).

8. SUMMARY OF FACT(S):

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

b. A review of the applicant's AMHRR reflects they received nonjudicial punishment for willfully disobeying a lawful order from a superior commissioned officer and for wrongfully engaging in extramarital conduct and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 1 year, 7 months, and 12 days of net active service this period; however, they did not complete their 3 years, 22-week contractual enlistment obligation.

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

d. Published DoD 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: PTSD with MDD (100% SC); IPV.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found IPV occurred while on active duty. VA service connection for PTSD with MDD establishes nexus with 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 two mitigating BH conditions, Intimate Partner Violence resulting in PTSD. Medical records indicate that, while on active duty, applicant's spouse repeatedly physically and psychologically abused applicant. Such abuse over time can weaken ego strength and lead to an impaired ability to adhere to normal social boundaries. In this situation, it would not be unusual for a domestic violence victim to seek protection and solace in the arms of another person, even if such

protection came at the price of violating legal and moral boundaries. [Note-due to overlap of symptoms, the diagnosis of MDD is subsumed under the diagnosis of IPV resulting in PTSD.

(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 IPV resulting in PTSD outweighed the basis of separation - wrongful engagement in extramarital conduct with a person who was not their spouse and failure to obey a superior commissioned officer.

b. Response to Contention(s):

(1) The applicant contends they were discharged for adultery. They were told by multiple people in their leadership that as long as they were in mutual agreement and getting a divorce, which they were, it would be fine to move on with someone else before the divorce was final.

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 IPV and PTSD fully outweighing the applicant's adultery and failure to obey a lawful order basis for separation.

(2) The applicant contends when they presented the evidence that their leadership was aware of their upcoming divorce and their current spouse was also seeing someone else, which they had proof during that time, as their spouse told them; it was disregarded, and they were the only one charged with adultery.

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 IPV and PTSD fully outweighing the applicant's adultery and failure to obey a lawful orders basis for separation.

(3) The applicant contends being marked as an adulterer and other slurs by fellow service members and leadership during this time does not describe their character and they feel as though there were not treated as an equal to their spouse at that time. 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 IPV and PTSD fully outweighing the applicant's adultery and failure to obey a lawful orders basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's Intimate Partner Violence (IPV) resulting in PTSD outweighed the applicant's wrongful engagement in extramarital conduct with a person who was not their spouse and failure to obey a superior commissioned officer basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to Honorable because the applicant's IPV resulting in PTSD mitigated the applicant's misconduct of wrongful

engagement in extramarital conduct with a person who was not their spouse and failure to obey a superior commissioned officer. Thus, the prior characterization is no longer appropriate.

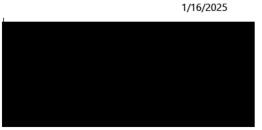
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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, paragraph 14-12a

Authenticating Official:



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 NCS – 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