

1. Applicant's Name:

- a. **Application Date:** 19 February 2021
- b. **Date Received:** 1 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 Under Other than Honorable Conditions. The applicant requests an upgrade to General (Under Honorable Conditions).

b. The applicant seeks relief contending, they are a combat veteran, deployed to Iraq for 12 months in a hostile situation. They were under constant mortar attacks and was in a security detail for the brigade commander and sergeant commander. They believe they had posttraumatic stress disorder (PTSD) and anxiety upon their return from deployment but was not diagnosed or treated. The issues upon their return, until discharge, were most likely due to PTSD and anxiety. They are requesting an upgrade to General (Under Honorable Conditions) in order to access their Veteran Affairs (VA) health benefits and any disability benefits they may qualify for.

c. **Board Type and Decision:** In a records review conducted on 10 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court- Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 12 October 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge under provision of AR635-200, Chapter 10, In Lieu of Trial by Court-Marital.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 26 September 2012

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

(6) **Separation Decision Date / Characterization:** 5 October 2012 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 6 October 2009 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 25 / GED-Equivalent / 115
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10 Infantryman / 2 years, 10 months
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Iraq (13 November 2010 – 8 November 2011)
- f. **Awards and Decorations:** ARCOM, AAM, NDSM, ICM-CS, GWOTSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 6 October 2009, the applicant enlisted in the Regular Army for 6 years as a PV2.

(2) The Enlisted Record Brief provides the applicant deployed to Iraq for one year (13 November 2010 – 8 November 2011), promoted to SPC (1 June 2011), and received both an Army Commendation Medal and an Army Achievement Medal. On 7 June and 31 July 2012, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA).

(3) On 3 April 2012, the applicant accepted nonjudicial punishment in violation of Article 128, UCMJ, for unlawfully assaulting a noncommissioned officer by striking the SGT's head with their head. Although, the subsequent page(s) are missing from the record to determine the applicant's full punishment, they were reduced to PFC.

(4) Two Personnel Action documents provide the following status changes:

- 21 May 2012, Present for Duty (PDY) to Failed to Report (FTR)
- 22 May 2012, FTR to Absent Without Leave (AWOL)

(5) On 7 August 2012, the applicant completed a medical assessment and history for separation. On the assessment, the applicant indicated anxiety, depression, sleeplessness, and dentures as dental problems.

(a) On their medical history, the applicant indicated the following "yes" answers:

- 10c: coughed up blood (immediately after deployment, they coughed up blood on three different occasions and then it never happened again)
- 10e: shortness of breath (they usually have shortness of breath when suffering from an anxiety attack)
- 10i: a chronic cough or cough at night (but they believe it's attributed to smoking)
- 11g: a hearing loss or wear a hearing aid (lost hearing in both ears but their left ear specifically)
- 12h: numbness or tingling (many extremities when left in the same position for a short period of time)

- 12i: swollen or painful joint(s), any knee or foot surgery including arthroscopy or the use of a scop to any bone or joint (their joints usually have pain, their knees lock and give out on occasion)
- 14c: currently in good health
- 15c: a head injury, memory, or amnesia (they have memory loss when it comes to simple things like where they parked for example)
- 17a: nervous trouble of any sort-anxiety or panic attacks (they do have a lot of problems with anxiety)
- 17c: loss of memory or amnesia, or neurological symptoms
- 17d: frequent trouble sleeping (most nights it is near impossible for them to fall asleep)
- 17e: received counseling at any type (currently enrolled in Behavioral Health)
- 17f: depression or excessive worry (they are constantly depressed)
- 17g: been evaluated or treated for a mental condition (they turn themselves into an ER when returning to Fort Polk)

(b) In block 30, the provider notes the following:

- 10c: coughing up blood after deployment; e, i: cough, “probably due to smoking & anxiety”
- 11g: left ear hearing loss
- 12a: numbness and tingling; 12b: feet; h, l: knee pain, swelling
- 15: memory loss
- 17a: anxiety, depression; c: loss of memory, trouble falling and staying asleep
- e, f, g: inpatient hospitalization at Crossroads; i: alcohol
- 20: ER visit after being AWOL
- 21: see #17

(c) On 10 August 2012, they completed their medical health examination at Baynes-Jones Army Community Hospital (BJACH). The provider noted anxiety, depression, sleep disturbances, and substance abuse. They were qualified for service and recommended to follow up with behavioral health, Army Substance Abuse Program (ASAP), their primary care manager, and the VA.

(6) On 21 September 2012, the company commander recommended pre-trial confinement to the Military Magistrate, Office of the Staff Judge Advocate. The Soldier has been ordered into pretrial confinement for four specifications in violation of Article 86, UCMJ (AWOL and failure to report); two specifications of Article 91 (disrespect in deportment to a superior noncommissioned officer); in violation of Article 92 (violation of a lawful order not to consume alcohol); in violation of Article 111 (driving while intoxicated); Article 134 (drunk and disorderly). Below is the timeline of events outlining the applicant's misconduct and the command's attempt to prevent them from continuing to engage in further misconduct:

- 21 January: received Article 15 for assaulting a noncommissioned officer (NCO) at previous post (Fort Riley).
- 17 May: first full day of duty in 1st Platoon, Delta Company.
- 19 May: driving while intoxicated; Police issued ticket.
- 21 May – 7 June: AWOL and admitted to Crossroads Regional Hospital; on 21 May platoon sergeant and platoon leader locate the applicant after they did not report to morning formation; the applicant refuses direct order to return to duty; unit receives a call about a week later that the applicant has self-admitted themselves to a hospital in Texas; the nurse reports to platoon leader that the applicant was expressing suicidal ideations and had been on

an alcohol and cocaine binge for the previous week; transferred to Crossroads Regional Hospital for approximately ten days for detox.

- 1 August: counseled for “failure to report on several occasions” since returning from AWOL.
- 2 August: counseled for failure to report to 0600 formation; squad leader finds the applicant asleep in their room and orders them to come to formation; the applicant refuses to come to formation.
- 2 August: counseled for failure to report 0845 formation. Section Sergeant finds the applicant asleep in the room and orders them to formation; the applicant refuses to come to formation.
- 2 August: counseled for failure to report 1215 formation. PSG finds the applicant in their room and orders them to formation; the applicant refuses to come to formation.
- 20 – 27 August: counseled for failure to report for BN FTX, missing movement for eight day field problem, and refusal to train with specific intent to avoid maneuvers or field exercises.
- 4 September: counseled for having, “wrongfully used, possessed, distributed synthetic marijuana (Spice).” CID is still investigating this incident.
- 12 September: counseled for failure to report to 0845 formation.
- 14 September: arrested for offense of being “drunk and disorderly”; the applicant violates ASAP by drinking at barracks and then going out to bars; they get in a fight outside one of the bars with a group of locals; upon entering Fort Polk, the applicant’s vehicle is stopped by the police; they begin arguing with them and is arrested for drunk and disorderly behavior.
- 15 September: seen off post violating conditions of liberty.
- 17 September: counseled for failure to report to 0500 formation.
- 18 September: counseled for violation of a General Order by having a dog in the barracks.
- 18 September: counseled for failure to report to 0500 formation.
- 19 September: counseled for failure to report to 0500 formation.
- 19 September: counseled for refusal to train during a Company PT test; the applicant does not show up to platoon first formation and has to be retrieved from their room; sometime between 0630 Company formation and 100m movement to APFT briefing area, they disappear and return to barracks in order to avoid taking PT test.
- 20 September: counseled for failure to report to 0500 formation. Soldier has to be retrieved from their room and comes to formation in civilian clothes, refusing to get into uniform.
- 20 September: counseled for refusing to train in platoon ruck march.
- 20 September: counseled for failure to report to 0930 formation. Soldier cannot be found throughout the day.
- 21 September: counseled for insubordinate conduct toward an NCO; failure to obey order or regulation; resistance, flight, breach of arrest, and escape; drunken or reckless operation of a vehicle, and disorderly conduct, drunkenness; DWI: the applicant was driving on post and ran over a curb outside the 4/10 BSTB. The Brigade CSM happened to be nearby and stopped him. Platoon Leader was called to scene and took the applicant for a breathalyzer where they blew a 0.100 BAC; they acted extremely disrespectfully to Brigade CSM, BSTB Battalion CSM and Commander, BSTB Staff Duty, and their company first sergeant; the applicant along with three other Soldiers involved in the incident were ordered to stay under the watch of Battalion staff duty until the morning when they would meet with the Battalion CSM. The applicant directly disobeyed order and left the Battalion. They were

hiding out the next morning (not in their barracks room) and a search had to be conducted to find them.

- 21 September: the applicant assessed a flight risk by company leadership. A guard of five Soldiers is placed on them at the company area until they can be sent to pre-trial confinement. The applicant argues with platoon leadership while under guard and repeatedly tries to walk out of the building.

(7) On the same day, the applicant was placed in pretrial confinement, not as a result of nonjudicial punishment (NJP) or court-martial. The brigade judge advocate sought concurrence of the staff judge advocate and the Special Court-Martial Convening Authority and both supported the imposition of pre-trial confinement.

(8) On 24 September 2012, the applicant was charged with the following violations of Article 86, UCMJ (five specifications), for having been AWOL (22 – 26 May 2012) and failure to report on four occasions (2 and 20 August; 17 and 20 September 2012); Article 90, for willfully disobeying a superior commissioned officer (21 May 2012); Article 91 (three specifications), for having been disrespectful in language and deportment (20 September 2012); Article 92, for disobeying a lawful order for leaving on restriction and wrongfully consuming alcohol (15 and 20 September 2012); Article 111 (two specifications), for drunk driving (19 May and 20 September 2012); Article 134, drunk and disorderly (14 September 2012). Charges were preferred.

(9) On 26 September 2012, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulations 635-200, chapter 10, discharge in lieu of trial by court-martial. In their request, they affirmed no one had subjected them to coercion, and counsel had advised them of the implications of their request. The applicant further acknowledged they were guilty of the charge against them or a lesser one and elected to submit a statement on their behalf.

(a) The applicant provides a self-authored statement in support of their Chapter 10 voluntary discharge request, explaining their struggles upon redeployment when their mood and demeanor changed. They were a rear truck gunner the entire deployment, convoying three to four times a week, and received indirect fire three to four weeks on VBC. The applicant had relationship struggles with their pregnant fiancée when they PCS'ed and had to leave them behind. They were on edge, depressed, and felt a lot of pressure as a team leader in charge of six Soldiers. They had a mental and emotional breakdown after their fiancée broke up with them over the phone, which put them into a depression, and they turned to alcohol. The applicant made some stupid, high-risk decisions in their deteriorated state, went AWOL and was arrested for a driving while under the influence (DWI). A few days later, they turned themselves into a hospital as they were suicidal at this point and wanted to be in a safe place in order not to harm themselves. Their squad leader picked them up from the hospital in Texas and took them to BJACH where they were referred to a rehabilitation hospital for treatment [ten days]. They have not been a good Soldier recently as they are depressed and frustrated, and at a crossroads in their life and they have so much anxiety. The applicant regrets the things they have said and done recently, disrespected NCOs, failed to report to work and given up as a Soldier. Considering a separation would serve the military in terms of time and resources, the community in terms of adding a productive member to the work force, their family in terms of being there financially and emotionally for [their] daughter, and themselves in terms of reintegrating into life without the stigma of a federal conviction and jail time.

(b) Defense counsel endorsed their voluntary discharge request, acknowledging the applicant was counseled on the possible effects of an Under Other than Honorable Conditions characterization of service.

(c) The judge advocate received the company and battalion commanders' recommendation, approving the voluntary discharge request.

(10) On 5 October 2012, the separation authority approved the separation with an Under Other than Honorable Conditions character of service and reduction to the lowest enlisted rank.

(11) On 10 October 2012, they were issued separation orders. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 12 October 2012, with an Under Other than Honorable Conditions characterization of service. They have not completed their full first term of service. Their total service 3 years, 4 months, and 24 days.

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

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

(1) **Applicant provided:**

(a) On 29 September 2010, they were evaluated by Fort Polk ASAP; the Patient Intake/Screen Record indicates the physician diagnosed them with Alcohol Dependence.

(b) On 28 May 2012, the applicant was seen at BJACH, for Suicidal Ideation and transported to Crossroads by ambulance in stable condition. The notes indicate the applicant was AWOL for nine days and received a DUI yesterday. The applicant attempted to check themselves into a hospital because they felt suicidal. The applicant does not have a current plan for suicide and has never tried to commit suicide in the past. The applicant admitted to alcoholism and stated they used drugs in the past. Their parents were being evicted from their home in Colorado and the applicant felt helpless because of this. They were recently separated from their fiancée and the fiancée will not allow the applicant to see their unborn child.

(2) **AMHRR Listed:** On 7 June 2012, the applicant underwent a mental status evaluation with Department of Behavior Health, BJACH, due to hospital discharge. They were diagnosed with Depressive Disorder NOS, Alcohol Dependence, and Cocaine Abuse. The applicant was considered fit for full duty, including deployment. There was no obvious cognition; cooperative behavior; normal perception; unlikely to be impulsive; not considered dangerous. The applicant could understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements. The applicant was scheduled to see Department of Social Work on 20 June 2012. The recommendations indicated to ensure the applicant attends all follow-up appointments and assigned duties should be relatively low-stress and should not involve leadership responsibilities.

5. APPLICANT-PROVIDED EVIDENCE:

a. DD Form 293 (Application for the Review of Discharge); VA Statement of Support; Various Medical Health Records

b. Three Character Letters provides the applicant was their rear gunner watching out for IED's and ambushes and held a team leader slot in their platoon, tasked to protect the Colonel and brigade Sergeant Major; always held themselves to the upmost of standards and was a leader that everyone could look up to; they was always willing to extend themselves to support

others and worked hard at anything they do, who is well respected amongst their peers, friends, and family.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this application.

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 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial (2008 Edition), United States, states 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 orders and discipline in the Armed Forces.

(1) Article 86 (absence without leave) states in subparagraph being absence without leave for more than 3 days, not more than 30 days, the maximum punishment consists of a forfeiture of two-thirds pay and allowances, and confinement for six months.

(2) Article 90 (willfully disobeyed a lawful order from a superior commissioned officer) states in subparagraph the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

(3) Article 91 (disrespectful in language and deportment towards a superior noncommissioned officer) states in subparagraph the maximum punishment consists of bad conduct discharge, forfeiture of all pay and allowances, and confinement for six months.

(4) Article 92 (willfully disobeyed a lawful order) states in subparagraph the maximum punishment consists of bad conduct discharge, forfeiture of all pay and allowances, and confinement for six months.

(5) Article 111 (drunken driving) states in subparagraph the maximum punishment consists of bad conduct discharge, forfeiture of all pay and allowances and confinement for six months.

(6) Article 134 (drunk and disorderly) states in subparagraph the maximum punishment consists of forfeiture of two-thirds pay and allowances for three months, and confinement for three months.

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 General (Under Honorable Conditions). The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA for six years as a PV2, served as 11B in Iraq for a year, promoted to SPC, and has been awarded both the Army

Commendation and Achievement Medal. They were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA). Six months post redeployment, the applicant went AWOL and was arrested for driving while intoxicated. A few days after their release, the applicant self-admitted to a hospital for suicidal ideations, after they had been on an alcohol and cocaine binge the previous week. The applicant was placed in a ten day rehabilitation facility (Crossroads) to detox. Afterwards, they returned to their unit and received 18 counseling documents for various misconducts such as failing to report, refusing to train, wrongful use of spice, missed ASAP appointments, and driving while intoxicated on post. As a result, the applicant was placed in pretrial confinement, charged five specifications for having been AWOL and failure to report on four occasions; for willfully disobeying a superior commissioned officer; three specifications for having been disrespectful in language and deportment; for disobeying a lawful order for leaving on restriction and wrongfully consuming alcohol; two specifications for drunk driving; for having been drunk and disorderly. Charges were preferred.

(1) After consulting with counsel, the applicant voluntarily requested to be discharged in lieu of trial by court-martial and elected to submit a statement on their behalf. A self-authored statement in support of their Chapter 10 voluntary discharge request, explaining their struggles upon redeployment when their mood and demeanor changed. They was a rear truck gunner the entire deployment, convoying three to four times a week, and received indirect fire three to four weeks on VBC. The applicant had relationship struggles with their pregnant fiancée when they PCS'ed and had to leave them behind. They was on edge, depressed, and felt a lot of pressure as a team leader in charge of six Soldiers. They had a mental and emotional breakdown after their fiancée broke up with them over the phone, which put them into a depression, and they turned to alcohol. The applicant made some stupid, high risk decisions in their deteriorated state, went AWOL and was arrested for a driving while under the influence (DWI). A few days later, they turned themselves into a hospital as they were suicidal at this point and wanted to be in a safe place in order not to harm themselves. Their squad leader picked them up from the hospital in Texas and took them to BJACH where they was referred to a rehabilitation hospital for treatment [ten days]. They have not been a good Soldier recently as they are depressed and frustrated, and at a crossroads in their life and they have so much anxiety. The applicant regret the things they have said and done recently, disrespected NCOs, failed to report to work and given up as a Soldier. Considering a separation would serve the military in terms of time and resources, the community in terms of adding a productive member to the work force, their family in terms of being there financially and emotionally for my daughter, and themselves in terms of reintegrating into life without the stigma of a federal conviction and jail time.

(2) The applicant was separated with an Under Other than Honorable Conditions characterization of service and reduced to the lowest enlisted grade. They served 3 years and 7 days of their 6-year contractual obligation.

(3) The applicant provided evidence indicating an ASAP Provider, Fort Polk, diagnosed them with Alcohol Dependency two months prior to the start of their one year Iraq deployment.

(a) Upon returning from having been AWOL and getting a DUI, the applicant was seen at BJACH, for Suicidal Ideation. The applicant attempted to check themselves into a hospital because they felt suicidal but did not have a current plan for suicide and has never tried to commit suicide in the past. The applicant admitted to alcoholism and stated they used drugs in the past. Their parents [at the time] was being evicted from their home and the applicant felt helpless because of this. They were recently separated from their fiancée and the fiancée will not allow the applicant to see their unborn child. The applicant was transported by an ambulance to a rehabilitation facility (Crossroads) in a stable condition, where they detoxed for

ten days.

(b) Upon return, the applicant underwent a mental status evaluation with Department of Behavior Health, BJACH, due to hospital discharge. They were diagnosed with Depressive Disorder NOS, Alcohol Dependence, and Cocaine Abuse. The applicant was considered fit for full duty, including deployment. There was no obvious cognition; cooperative behavior; normal perception; unlikely to be impulsive; not considered dangerous. The applicant could understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements. The recommendations indicated to ensure the applicant attends all follow-up appointments (scheduled to see Dept of Social Work) and assigned duties should be relatively low-stress and should not involve leadership responsibilities.

c. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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: Depression; Adjustment DO with depressed mood; Alcohol Dependence; Adjustment DO with anxiety and depressed mood; Anxiety DO NOS. VA: MDD (0%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnoses of Depression, Adjustment DO with depressed mood; Adjustment DO with anxiety and depressed mood; Anxiety DO NOS were made while applicant was on active duty. VA service connection for MDD establishes it occurred during military service.

(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 two BH conditions, Major Depressive DO (MDD) [Note-Depressive DO NOS and Adjustment DO with depressed mood are subsumed under MDD] and Anxiety DO NOS [Note Adjustment DO with anxiety and depressed mood is subsumed under Anxiety DO NOS] which mitigate some of his misconduct. As there is an association between MDD, Anxiety DO and avoidant behaviors, there is a nexus between these conditions and his period of AWOL and multiple FTRs. Applicant's alcohol related misconduct is not mitigated under liberal consideration due to fact

this misconduct did not occur as a result of his underlying BH conditions with subsequent self-medication with alcohol. Rather his AUD developed 10-11 years prior to him entering military service and preceded the onset of his MDD and Anxiety DO NOS. The remainder of the applicant's misconduct is not mitigated by his diagnosis of MDD and Anxiety DO NOS given that neither of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the ADRB's application of liberal consideration, the board concurred with the opinion of the Board's Medical Advisor, a voting member, that the applicant mitigated medical diagnosis of Anxiety DO NOS and MDD does not mitigate the medically unmitigated offenses of unlawfully assaulting a noncommissioned officer, willfully disobeying a superior commissioned officer, disrespectful in language and deportment, disobeying a lawful order for leaving on restriction and wrongfully consuming alcohol and drunk driving.

b. Response to Contention(s):

(1) The applicant contends, they are a combat veteran, deployed to Iraq for 12 months in a hostile situation. They were under constant mortar attacks and was in a security detail for the brigade commander and sergeant commander. They believe they had posttraumatic stress disorder (PTSD) and anxiety upon their return from deployment but was not diagnosed or treated. The issues upon their return, until discharge, were most likely do to PTSD and anxiety. They are requesting an upgrade to General (Under Honorable Conditions) in order to access their Veteran Affairs (VA) health benefits and any disability benefits they may qualify for. The board considered the applicant mitigated medical diagnosis diagnoses Anxiety DO NOS and MDD, and combat tour to Iraq, numerous award and 2 years of service but determined that these factors did not outweigh the applicant's medically unmitigated misconduct - unlawfully assaulting a noncommissioned officer, willfully disobeying a superior commissioned officer, disrespectful in language and deportment, disobeying a lawful order for leaving on restriction and wrongfully consuming alcohol and drunk driving - basis of separation. Therefore, discharge upgrade is not warranted at this time.

(2) The applicant contends [on their support statement from their Chapter 10 request], they struggled after redeployment, when their mood and demeanor changed. They was a rear truck gunner the entire deployment, convoying three to four times a week, and received indirect fire three to four weeks on VBC. The applicant had relationship struggles with their pregnant fiancée when they PCS'ed and had to leave them behind. They was on edge, depressed, and felt a lot of pressure as a team leader in charge of six Soldiers. They had a mental and emotional breakdown after their fiancée broke up with them over the phone, which put them into a depression, and they turned to alcohol. The applicant made some stupid, high risk decisions in their deteriorated state, went AWOL and was arrested for a driving while under the influence (DWI). A few days later, they turned themselves into a hospital as they were suicidal at this point and wanted to be in a safe place in order not to harm themselves. Their squad leader picked them up from the hospital in Texas and took them to BJACH where they was referred to a rehabilitation hospital for treatment [ten days]. They have not been a good Soldier recently as they are depressed and frustrated, and at a crossroads in their life and they have so much anxiety. The applicant regret the things they have said and done recently, disrespected NCOs, failed to report to work and given up as a Soldier. Considering a separation would serve the military in terms of time and resources, the community in terms of adding a productive member to the work force, their family in terms of being there financially and emotionally for my daughter, and themselves in terms of reintegrating into life without the stigma of a federal conviction and jail time. The board considered this contention and determined that the applicant's discharge was proper, and equity and the separation authority acted properly in accordance with AR 635-

200, chapter 10 as outlined above in paragraph 9a (3-4) and 9b (1).

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

d. Rationale for Decision:

(1) The Board considered the applicant's request supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. Although the applicant had behavioral health conditions of MDD and Anxiety DO NOS which does mitigate some of the misconduct, the Board concurred with the Medical Advisor that the totality of the applicant's misconduct outweighs any behavioral health mitigating conditions. The board voted not to change the applicant's characterization of service because, the applicant's behavioral health condition does not mitigate the offenses of unlawfully assaulting a noncommissioned officer, willfully disobeying a superior commissioned officer, disrespectful in language and deportment, disobeying a lawful order for leaving on restriction and wrongfully consuming alcohol and drunk driving. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's Under Other Than Honorable Conditions was proper and equitable as the applicant's misconduct fell below that level of satisfactory service warranted for a characterization upgrade to General or Honorable.

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

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

7/30/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs