

1. Applicant's Name:

- a. **Application Date:** 8 February 2021
- b. **Date Received:** 17 February 2021
- c. **Representative:** 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 under than honorable conditions. The applicant requests an upgrade to honorable, a change of their separation code, reentry code, and the narrative reason for separation.

(2) The applicant seeks relief contending they were unlawfully held past their expiration term of service (ETS) date for administrative separation, their ETS was scheduled for July 2016. They submitted an Article 138 (Complaints of Wrong) complaint to ask what regulatory authority was being used to retain them past their ETS date. They were ignored and held until their administration separation paperwork was completed. They should not have been held past their ETS for administration separation. They had served their term of enlistment and should have received an honorable discharge and their narrative reason for separation should have reflected they completed their term of service.

(3) They currently have a combined service connected evaluation of 90-percent by the Department of Veterans Affairs (VA) for Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Migraines, which were not treated while they were on active duty.

b. Board Type and Decision: In a records review conducted on 23 August 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. Please see Section 9 of this document for more detail regarding the Board's decision.

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: 17 October 2016

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 20 September 2016

(2) **Basis for Separation:** drunk and disorderly and damaged non-government property

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

(4) **Legal Consultation Date:** 20 September 2016

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

(6) Separation Decision Date / Characterization: 20 September 2016 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 July 2014 / 2 years

b. Age at Enlistment / Education / GT Score: 27 / One Semester College / 111

c. Highest Grade Achieved / MOS / Total Service: E-5 / 36B1O, Financial Management / 5 years, 9 months, 9 days

d. Prior Service / Characterizations: Active Duty, 10 November 2009 – 12 February 2010 / Uncharacterized

e. Overseas Service / Combat Service: SWA / Afghanistan (11 November 2012 – 25 August 2013; Jordan (28 February 2015 – 12 August 2015), Kuwait (13 August 2015 – 30 August 2015)

f. Awards and Decorations: ACM-CS, ARCOM, AAM, AGCM, NDSM, GWTSM, ASR, NATOMDL, OSR

g. Performance Ratings: 1 October 2014 – 27 July 2015 / Marginal

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DD Form 4 (Enlistment Document) dated 10 November 2009 reflects that applicant enlisted in the Regular Army for a period of 4 years.

(2) A memorandum, Foxtrot Company, 3rd Battalion, 60th Infantry Regiment, 193rd Infantry Brigade, U.S. Army Basic Combat Training Center of Excellence, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 1 February 2010, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 11, paragraph 11-3 for Entry Level Performance and Conduct. The reason for the proposed action, lack of discipline, maturity, and integrity expected of a Soldier in the U.S. Army. The company commander recommended the applicant an entry level separation (Uncharacterized). The applicant acknowledged receipt of notification of separation.

(3) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged from the Regular Army on 12 February 2010 with a character of service of "Uncharacterized." Item 28 (Narrative Reason for Separation) is shown as Entry Level Performance and Conduct.

(4) A DA Form 4 (Enlistment Document) reflects the applicant enlisted in the Regular Army on 12 April 2011, for a period of 4 years.

(5) A DA Form 2166-8 (NCO Evaluation Report) covering the period 1 October 2014 through 27 July 2015, reflects in –

- Part Ig (Reason for Submission) – Relief for Cause

- Part IV (Army Values/Attributes/Skills/Actions) – the applicant's rater marked "NO" to Respect/Equal Opportunity/Equal Employment Opportunity, Honor, and Integrity; and commented –
 - "supported equal opportunity and committed to ensuring that all Soldiers are treated fairly
 - demonstrated a serious lack of integrity and poor judgment without consideration of effects
 - fraternized with [applicant's] subordinates on multiple occasions"
- Part IVd (Leadership) – the applicant's rater checked "Needs Improvement (Some)" and commented –
 - "lead an [Moral, Welfare, and Recreation] MWR trip that resulted in administrative actions being brought against ten Soldiers including [applicant]; violated General Order 1 while deployed
 - charged for simple assault on a civilian during an off duty incident
 - does not fully support [Sexual Harassment/Assault Response and Prevention] SHARP program; made lewd comments to waitresses in front of [Applicant's] Soldiers during MWR trip during deployment
- Part IVf (Responsibility & Accountability) – the applicant's rater checked "Needs Improvement (Much)" and commented "endangered the welfare of [Applicant's] Soldiers on an MWR trip in theater; allowed Soldiers to violate General Order 1 by allowing them to drink alcohol"
- Rater Overall Performance – the applicant's rater marked "Marginal"
- Part Vc (Senior Rater – Overall Performance) – the applicant's senior rater marked "5 – Poor"
- Part Vd (Senior Rater – Overall Potential) – the applicant's senior rater marked "5 – Poor"
- Part V (Senior Rater Overall Potential) – the applicant's senior rater commented
 - "do not promote; this NCO does not display the decision making or qualities required of a Non-Commissioned Officer
 - potential is limited; has been relieved of [Applicant's] position as Senior Distributing Analyst for multiple incidents of misconduct
 - on two separate occasions [Applicant] has conducted [themselves] in a manner which brought discredit upon [themselves], the NCO Corps, and the Army"

(6) A DD Form 458 (Charge Sheet) dated 3 August 2015 reflects charges were preferred against the applicant consisting of –

(a) Charge I – violation of Article 128 (Assault), Uniform Code of Military Justice (UCMJ) –

(1) Specification 1 – in that the applicant, did, at or near Aqaba, Jordan, on or about 20 June 2015, unlawfully grabbed and squeezed Sergeant (SGT) J____ K____'s neck their hand.

(2) Specification 2 – in that the applicant, did, at or near Aqaba, Jordan, on or about 20 June 2015, unlawfully pushed Staff Sergeant (SSG) S____ W____'s body into an automobile with their hands and spit saliva and blood on SSG W____'s body with their mouth.

(b) Charge II – violation of Article 109 (Property Other Than Military Property of United States – waste, spoilage, or destruction), UCMJ, in that the applicant, did at or near Aqaba, Jordan, on or about 20 June 2015, willfully and wrongfully damage, by breaking, the driver's side rear window of an automobile with their hands, the amount of said damage being in the sum of \$500.00 or less, the property of a rental car company.

(c) Charge III – violation of Article 93 (Cruelty & Maltreatment of Subordinates), UCMJ, in that the applicant, did maltreat Specialist (SPC) D ____ I ____, a person subject to their orders, by stating to them derogatory statements.

(d) Charge IV – violation of Article 134, UCMJ, with two specifications of stated misconduct of being to the prejudice of good order and discipline in the Armed Forces

(7) A memorandum, Headquarters, 1st Sustainment Command (Theater), subject: Involuntary Retention on Active Duty, [Applicant], dated 14 June 2016, reflects the commanding general directed the applicant be retained on active duty under the provisions of Army Regulation 635-200, paragraph 1-22c. The commanding general states the applicant is awaiting trial by court-martial, and they will be involuntarily extended until final disposition of the court-martial charges.

(8) A DA Form 3822 (Report of Mental Status Evaluation) dated 7 July 2016, reflects the applicant is fit for full duty, including deployment.

(a) Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements.

(b) Section V (Diagnoses) reflects the applicant has an Axis I (Psychiatric Condition) of Occupational Problem.

(c) Section VIII (Additional Comments) reflects the applicant was screened for PTSD and mild TBI. The screenings were negative.

(d) Remarks – reflects the behavioral health provider states there is no evidence of mental defect, emotional illness or psychiatric disorder of sufficient severity to warrant disposition through military channels. The applicant is psychiatrically cleared for an administrative action deemed appropriate by command.

(9) A Second Judicial Circuit, U.S. Army, Offer for Alternative Disposition, dated 20 July 2016, reflects the applicant, has examined the charges and specifications against them, as well as the underlying evidence.

(a) The applicant had advise of their defense counsel and after counseling with them, the applicant voluntarily offered to accept proceedings under Article 15, UCMJ, for the offenses currently ending at court-martial; plead not guilty to Charges I and II with their specifications, and guilty to Charges II and IV with their specifications; and waive consideration of their case by an administrative separation board, so long as the characterization of service is no less than a General (Under Honorable Conditions) discharge.

(b) In exchange of their actions in the previous paragraph, the Convening Authority agrees to withdraw and dismiss the charges referred to court-martial on 13 November 2016;

and if administrative separation is initiated, approve a characterization of service no less favorable than General (Under Honorable Conditions).

(c) The applicant acknowledges through their signature, that there are no promises, conditions, or understandings regarding their offer to plead guilty that are not contained within this offer. The offer to plea originated with them. No person has made any attempts to force or coerce them into making this offer. The offer shall not be affected by consolidation, dismissal, or modification of any specification or charge. They are satisfied with the advice of their defense counsel who advised them of the meaning and effect of their guilty plea, and they understand the meaning and effect thereof.

(10) A DA Form 4856 (Developmental Counseling Form) dated 29 August 2016 reflects the applicant received event oriented counseling from their company commander with the recommendation of their separation under Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense, as stated in their plea bargain. The applicant agreed with the information and signed the form.

(11) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 6 September 2016 reflects that applicant received nonjudicial punishment – (1) in that they, did, at or near Aqaba, Jordan, on or about 20 June 2015, willfully and wrongfully damaged, by breaking, the driver's side rear window of an automobile with their hands, the amount of said damage being in the sum of \$500.00 or less, the property of a rental car company, in violation of Article 109, UCMJ; (2) in violation of Article 134, UCMJ with two specifications of conduct being to the prejudice of good order and discipline in the Armed Forces and of a nature to bring discredit upon the Armed Forces. Their punishment consisted of a reduction in rank/grade from sergeant/E-5 to corporal/E-4, forfeiture of \$1,191.00 pay, and extra duty and restriction for 30 days. The applicant elected not to appeal.

(12) A memorandum, Headquarters and Headquarters Company, Special Troops Battalion, 1st Sustainment Command (Theater), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 19 September 2016, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense with a recommended characterization of service of general (under honorable conditions) for acts of misconduct, for drunk and disorderly and damaged non-government property. On 20 September 2016, the applicant acknowledged the basis for the separation and of the rights available to them.

(13) The applicant's memorandum, subject: Election of Rights under Army Regulation 635-200 Notice Procedures, dated 20 September 2016, reflects the applicant completed their election of rights, signing they have been given the opportunity to confer with counsel. They elected not to submit statements on their own behalf.

(14) A memorandum, Headquarters and Headquarters Company, Special Troops Battalion, 1st Sustainment Command (Theater), dated 20 September 2016, reflects the applicant's company commander submitted a request to separate them prior to their expiration term of service, stating the applicant's continued service is not in the best interest of the U.S. Army.

(15) A memorandum, 82nd Airborne Division Sustainment Brigade, 82nd Airborne Division (Rear)(Provisional), subject: Separation of [Applicant] under the Provisions of Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 20 September 2016, the separation authority, having review the separation packet of the

applicant and careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service and their service be characterized as General (Under Honorable Conditions). The separation authority states after reviewing the rehabilitative transfer requirements, determined the requirements are waived, as the transfer will service no useful purpose or produce a quality Soldier.

(16) On 17 December 2015, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant completed 5 years, 6 months, and 6 days of net active service this period. They completed their full first full term of service. The DD Form 214 shows in:

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12i (Effective Date of Pay Grade) – 6 September 2016
- item 18 (Remarks), in part –
 - is void of a continuous honorable service remark (20110412-20140717)
 - MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- 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: NA

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation as described in previous paragraph 4h(8).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Certificate of Recognition
- NATO Certificate
- Certificate of Completion
- Request for Redress of Grievances under Article 138
- Article 138 Complaint
- Joint Services Transcript
- DD Form 214
- Academic Transcript
- VA Letter, Summary of Benefits, page 1
- Resume

6. POST SERVICE ACCOMPLISHMENTS: 143 hours of College Credit

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 27-10 (Military Justice) effective 11 June 2016 prescribed the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2012, and rules for courts-martial contained in the Manual for Courts-Martial. Chapter 19 (Complaints under Article 138) established procedures for the preparation, submission, and disposition of complaints made pursuant to UCMJ, Article 138 by a member of the Armed Forces against a commanding officer. The UCMJ, Article 138 states: "Any member of the Armed Forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."

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

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

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

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

(4) Paragraph 1-22c stated a Soldier who is awaiting trial or result of trial by court-martial when he/she would otherwise be eligible for discharge or release from Active Duty will not be discharged or released until final disposition of the court-martial charges.

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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.

(6) 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

h. Manual for Courts-Martial, United States (2016 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 93

(Cruelty & Maltreatment of Subordinates), Article 109 (Property Other than Military Property of U.S.: Waste, Spoilage, or Destruction of a Value of \$500.00 or less), and Article 128 (Assault).

8. SUMMARY OF FACT(S):

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

b. The available evidence reflects charges were preferred against the applicant for serious offenses, to which the applicant submitted an Offer of Alternative Disposition and accepted nonjudicial punishment and waived consideration of their case by an Administrative Separation Board so long as the characterization of their service is no less than a General (Under Honorable Conditions). The applicant was involuntarily discharge from the U.S. 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 5 years, 9 months, and 6 days of net active service this period and complete their first full term of service; however, they did not complete their 6-year reenlistment contractual 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their military service. [Note: their VA Letter, Summary of Benefits does not address the applicant's service connected conditions.]

e. 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: Major Depressive Disorder (MDD); TBI. [Note: Adjustment DO with depressed mood and Depression are subsumed under diagnosis of MDD.]

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnoses of Depression and Concussion were made while in service. VA service connection for MDD and TBI establishes they began during service.

(3) Does the condition or experience actually excuse or mitigate the discharge?

Partially. The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition which mitigates some of his misconduct. As there is an association with MDD and self-medication with alcohol, there is a nexus between applicant's MDD, that portion of drunk and disorderly conduct that does not involve physical violence towards others and applicant's June 2016 DUI. MDD does not mitigate physical violence towards others or destruction of non-government property as it does not affect one's ability to distinguish right from wrong and act in accordance with the right. Applicant's diagnosis of TBI does not mitigate the charges of drunk and disorderly conduct or destruction of non-government property as these offenses occurred prior to the date of the TBI (offenses occurred from June to Aug 2015; TBI was incurred in Sep 2015). TBI does, however, mitigate the offense of DUI given the nexus between TBI and self-medication with alcohol.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's MDD outweighed the basis for applicant's separation – damaged military property, drunk and disorderly.

b. Response to Contention(s):

(1) The applicant contends they were unlawfully held past their ETS date for administrative separation, their ETS was scheduled for July 2016. The applicant contends they submitted an Article 138 (Complaints of Wrong) complaint to ask what regulatory authority was being used to retain them past their ETS date. The Board considered this contention and determined Army Regulation 635-200, Paragraph 1-22c states a Soldier who is awaiting trial or result of trial by court-martial when he/she would otherwise be eligible for discharge or release from Active Duty will not be discharged or released until final disposition of the court-martial charges.

(2) The applicant contends they had served their term of enlistment and should have received an honorable discharge and their narrative reason for separation should have reflected they completed their term of service. The Board considered this contention and determined the applicant's discharge is appropriate as the applicant was discharged for misconduct and the applicant served 5 years, 9 months, and 9 days of their 6 year contractual agreement with the Army. Thus, the Board determined this contention is not valid and the applicant was properly and equitably discharged.

(3) The applicant contends they currently have a combined service connected evaluation of 90-percent by the VA for PTSD, TBI, and Migraines, which were not treated while they were on active duty. The Board considered this contention and determined the criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had unmitigated basis for separation. The Board also considered the totality of the applicant's record, including the applicant's BH conditions and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct.

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

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's MDD did not excuse or mitigate the offenses of damaged military property, drunk and disorderly. The Board noted the applicant's file contained additional misconduct to include assault, derogatory statements toward a specialist, and fraternizing with subordinates. The Board believed the totality of the applicant's misconduct outweighed any mitigation offered under liberal considerations. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General (Under Honorable Conditions) discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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:**
- b. Change Characterization to:**
- c. Change Reason / SPD code to:**
- d. Change RE Code to:**
- e. Change Authority to:**

Authenticating Official:

9/12/2024

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