

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 15 February 2021**b. Date Received:** 17 February 2021**c. Counsel:** [REDACTED]**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 an under other than honorable conditions. The applicant requests an upgrade to honorable, change of their narrative reason for separation to medical separation, change of their separation code, reentry code, and backpay to the date of separation. If the Board is unable to grant medical separation, the applicant requests to be reinstated in the U.S. Army for the General Court-Martial Convening Authority (GCMCA) to make the requisite determination as to whether the applicant's misconduct was related to Post-Traumatic Stress Disorder (PTSD) as required by Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-17g(1), which may lead to a medical separation.

(2) The applicant, through counsel, seeks relief stating their discharge characterization is unjust because they should have been medically separated for combat related injuries. Their subsequent in-service drug use was directly related to their in-service diagnosis of PTSD. The Physical Evaluation Board (PEB) found the applicant eligible for a 60-percent disability rating for PTSD and injuries to their right leg. Their right leg injuries and PTSD originated from their deployment in Afghanistan, at which time their vehicle was struck by a rocket propelled grenade killing another Soldier in the vehicle. Their discharge came after four unblemished years of service and was the direct result of their combat-related injuries, including extensive shrapnel wounds to their leg and foot, Traumatic Brain Injury (TBI), PTSD, and a then misunderstood drug addiction/Substance Use Disorder – an addiction that was the direct result of them developing a dependence on highly addictive drugs prescribed to them by Army doctors for the pain associated with their severe combat injuries. Fearful, suffering, and not in their right mind, they believed they had no choice but to agree to this form of discharge.

(3) The applicant is entitled, in the interest of justice, to a record correction reflecting honorable service under the liberal considerations of the Hagel and Kurta Memorandums because all of the applicant's misconduct was a direct result of PTSD symptoms caused by combat trauma. Their discharge was inequitable because their disciplinary infractions were a result of their combat-related PTSD, TBI and Substance Use Disorder that developed during their recovery from combat-related injuries. Their otherwise laudable military and combat service far outweighs their misconduct and renders their discharge inequitable. After their combat-related disabilities rendered them eligible for a medical retirement, their command targeted them for misconduct citations. Their command's retaliation resulted in an inequitable Discharge in Lieu of Trial by Court-Martial. Their record should be corrected to reflect medical separation and they should receive backpay to the date of separation because the GCMCA failed to make the required determination as to whether the applicant's misconduct was related to their PTSD.

**b. Board Type and Decision:**

(1) The issue regarding backpay to the date of separation addressed in the applicant's counsel's letter, is not within the purview of this Board. This issue should be addressed by the Army Board of Correction of Military Records (ABCMR). A DD Form 149 (Application for the Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552) is enclosed for the applicant's use.

(2) In a records review conducted on 26 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge (TBI and PTSD diagnoses). 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

**3. DISCHARGE DETAILS:**

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

**b. Date of Discharge:** 5 August 2010

**c. Separation Facts:**

(1) **Dates and Charges Preferred (DD Form 458, Charge Sheet):** 9 July 2010 the applicant was charged with –

(a) Charge I – Violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ), with two Specifications – on or about 15 March 2010 and on or about 30 April 2010, without authority, failed to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation.

(b) Charge II – Violation of Article 112a (Wrongful Use of Controlled Substances), UCMJ, for four Specifications, for wrongfully use cocaine between on or about 22 March 2010 and on or about 25 March 2010; and for wrongfully use oxycodone, a schedule II controlled substance on three occurrences between on or about 22 March 2010 and 5 April 2010.

(c) Charge III – Violation of Article 134 (General Article), UCMJ for two Specifications, for as a result of wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of their duties, on or about 30 April 2010, and for, having been restricted to the limits of places of duty, worship, dining, and medical facilities, by a person authorized to do so, did, on or about 30 April 2010, break said restriction.

(2) **Legal Consultation Date:** 20 July 2010

(3) **Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) **Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 27 July 2010 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 2 February 2005 / 4 years, 19 weeks

**b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 94

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1O, Infantryman / 4 years, 6 months, 4 days.

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (8 July 2006 – 25 November 2006), Afghanistan (14 March 2008 – 9 May 2009)

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

**g. Performance Ratings:** NA

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

**(1)** On 19 May 2008 the applicant was awarded the Purple Heart for wounds received in action.

**(2)** A DA Form 3349 (Physical Profile) dated 7 July 2009, reflects the applicant's conditions of Chronic Right Lower Extremity (Leg and Foot) Pain status post Improvised Explosive Device Injury and PTSD as a permanent profile and not meeting retention standards.

**(3)** A DA Form 4856 (Developmental Counseling Form) dated 15 March 2010, reflects the applicant receive event-oriented counseling for violation of Article 86, Absent Without Leave, failure to report to appointed place of duty at appointed time. The applicant agreed with the information and signed the form.

**(4)** A DA Form 4856 dated 17 March 2010, reflects the applicant received event-oriented counseling for violation of Article 112a, Wrongful Use, Possession, Etc., of Controlled Substances of the UCMJ. Key Points of Discussion states the applicant tested positive for D-Amphetamine (DAMP) after a urinalysis conducted on 17 January 2010.

**(5)** A DD Form 199 (Physical Evaluation Board (PEB) Proceedings) dated 19 March 2010, reflects the applicant's medically unexpected conditions of PTSD, with an evaluation of 50-percent; Lower Extremity Compartment Syndrome (Right), with an evaluation of 10-percent; and Plantar Fasciitis, with an evaluation of 10-percent. Based on a review of the objective medical evidence of record, the findings of the PEB are the Soldier's medical and physical impairment prevents reasonable performance of duties required by grade and military specialty. The board finds the Soldier is physically unfit and recommends a combined rating of 60-percent, and that the Soldier's disposition be – placed on Temporary Disability Retired List with reexamination during December 2010.

**(6)** A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 26 April 2010, reflects the applicant received nonjudicial punishment for, on or about 17 January 2010,

wrongfully use D-Amphetamine, in violation of Article 12a, UCMJ. Their punishment consisted of a reduction in rank/grade from private two/E-2 to private/E-1, forfeiture of \$724.00 pay, extra duty and restriction for 45 days. The applicant elected not to appeal.

(7) A memorandum for the applicant's commander, subject: Commander's Notification and Required Response to a Positive Rehabilitation Urine Test Report, dated 15 April 2010, notified the applicant's commander that the applicant tested and was confirmed positive by the Forensic Toxicology Drug Testing Lab for cocaine, collected on 25 March 2010.

(8) A DA Form 4856 dated 20 April 2010, reflects the applicant received event oriented counseling for violation of Article 112a, Wrongful Use, Possession, Etc., of Controlled Substance, of UCMJ. Key Points of Discussion states the applicant tested positive for Cocaine after a urinalysis was conducted on 25 March 2010. The applicant agreed with the information and signed the form.

(9) A memorandum for the applicant's commander, subject: Commander's Notification and Required Response to a Positive Rehabilitation Urine Test Report, dated 29 April 2010, notified the applicant's commander that the applicant tested and was confirmed positive by the Forensic Toxicology Drug Testing Lab for Oxycodone and Oxymorphone, collected on 25 March 2010.

(10) Three DA Forms 4856 dated 30 April 2010, reflects the applicant received event oriented counseling for violation of Article 86, Absent Without Leave, failure to report to appointed place of duty at appointed time, drunk on duty, and for violation of restriction. The applicant agreed with the information and signed the three DA Forms 4856.

(11) A DD Form 458 (Charge Sheet) dated 9 July 2010, reflects charges referred against the applicant described in previous paragraph 3c(1).

(12) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial – [Applicant], dated 20 July 2010, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They request that they receive a characterization of service no less favorable than general (under honorable conditions). They understand they may request discharge in lieu of trial by court-martial because charges have been preferred against them under the UCMJ, which authorizes the imposition of a Bad Conduct or Dishonorable Discharge. They are making this request of their own free will and have not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, they acknowledge that they are guilty of the charges against them or of lesser-included offenses therein contained which also authorizes the imposition of a Bad Conduct or Dishonorable Discharge. Moreover, they hereby state that under no circumstances do they desire further rehabilitation, for they have no desire to perform further military service.

(a) Prior to completing this form, they have been afforded the opportunity to consult with an appointed defense counsel. They have been fully advised of the nature of their rights under the UCMJ. They understand that if their request for discharge is accepted, they may be discharged under conditions other than honorable. They have been advised and understand the possible effects of an under other than honorable conditions discharge and that, as a result, they will be deprived of many or all Army benefits, that they may be ineligible for many or all benefits as a veteran under both Federal and State law. They also understand that they may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge.

**(b)** They elected to submit statement in their behalf stating, they request consideration of the circumstances surrounding their offenses, their deployments to Iraq and Afghanistan, the incidents that lead to their actions, and grant them a chapter 10 discharge in lieu of court-martial with a general (under honorable conditions) characterization of service. During their deployment to Afghanistan, they were a gunner in an up-armored military vehicle that was hit by a rocket propelled grenade. The driver survived but the truck commander died from injuries sustained in the attack. They sustained muscle and tissue damage from the blast , still have shrapnel in their leg, and was awarded the Purple Heart. They have been diagnosed with PTSD.

**(13)** A memorandum, Fort Campbell Installation, subject: Request for Discharge in Lieu of Trial by Courts-Martial, [Applicant], dated 27 July 2010, provides the separation authority approved the applicant's request for voluntary discharge with a characterization of under other than honorable conditions.

**(14)** A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 5 August 2010. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 4 years, 6 months, 4 days
- item 12i (Effective Date of Pay Grade) – 6 April 2010
- item 18 (Remarks) – in part, Member has Completed First Full Term of Service
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

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

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

**(1) Applicant provided:**

- DA Form 3349 (Physical Profile) reflecting the applicant's PTSD condition not meeting retention standards
- Military Medical Records reflecting the applicant's diagnosis and treatment for behavior health conditions, including PTSD
- DD Form 199 (PEB Proceedings) reflecting the applicant as physically unfit with a PTSD condition rated at 60-percent evaluation
- Department of Veterans Affairs (VA) Social Work Psychosocial Note reflecting the applicant's Problem List which includes Acute PTSD following military combat

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel Letter regarding: Application of [Applicant] for a Discharge Upgrade and Medical Separation, with 15 Exhibits

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Attachment to DD Form 293, with 25 Exhibits
- three 3rd Party Character Statements

**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. Title 32, Code of Federal Regulations, Section 70.9 (Discharge Review Standards) provides the objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. Neither a Discharge Review Board nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the Discharge Review Board or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

d. 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.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2009, 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) 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) Paragraph 1-33 (Disposition Through Medical Channels) stated, except in separation actions under chapter 10, disposition through medical channels takes precedence

over administrative separation processing. Disability processing is inappropriate in separation actions under chapter 10.

(5) Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual of Courts-Martial, 2012, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under Army Regulation 40-501, chapter 8.

(7) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged 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.

(8) Paragraph 10-10, Limited use evidence, states due diligence should be exercised to avoid including limited use evidence in a separation action under this chapter, but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under this chapter. The separation authority will include a statement in the approval of separation under this chapter that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with DoDI 1010.01 and AR 600-85.

(9) 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.

f. 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.

g. 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 Department of Defense Instructions 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 (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. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following, Article 86 (Absence Without Leave), Article 112a (Wrongful Use, Possession, Etc., of Controlled Substance) and Article 34 (Drunkenness and Restriction, breaking).

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

## **8. SUMMARY OF FACT(S):**

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated an understanding a under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 4 years, 6 months, and 4 days of net active service this period and completed their first full term of service; however, they did not complete their contractual reenlistment service obligation of 6 years

c. Army Regulation 635-200 states a 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 discharged 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.

e. The applicant's AMHRR contains no documentation of a diagnosis of PTSD or other mental health conditions during the applicant's term of service. The applicant provided military medical document reflecting a diagnosis of PTSD and VA documentation reflecting the applicant's Problem List which includes PTSD.

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: PTSD in-service and service connected for PTSD and TBI.

(2) Did the condition exist, or experience occur during military service? **Yes.** PTSD

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, avoidance, and substance use, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends stating their discharge characterization is unjust because they should have been medically separated for combat related injuries. 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 PTSD fully outweighing the applicant's AWOL, Drug Abuse, FTRs basis for separation.

(2) The applicant contends stating they were fearful, suffering, and not in their right mind, they believed they had no choice but to agree to a chapter 10 request for discharge in lieu of trial by court-martial.

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 PTSD fully outweighing the applicant's AWOL, Drug Abuse, FTRs basis for separation.

(3) The applicant contends stating in the interest of justice, they are entitled to a record correction reflecting honorable service under the liberal considerations of the Hagel and Kurta Memorandums because all of the applicant's misconduct was a direct result of PTSD symptoms caused by combat trauma.

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 PTSD fully outweighing the applicant's AWOL, Drug Abuse, FTRs basis for separation.

(4) The applicant contends stating their otherwise laudable military and combat service far outweighs their misconduct and renders their discharge inequitable.

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 PTSD fully outweighing the applicant's AWOL, Drug Abuse, FTRs basis for separation.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge (TBI and PTSD diagnoses). 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Combat, Quality) and concurred with the conclusion of the medical advising official that the applicant's (TBI, PTSD) does mitigate the applicant's misconduct (AWOL, Drug Abuse, FTRs). Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade.

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

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210012876**

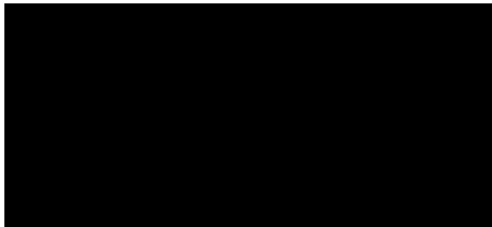
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

**Authenticating Official:**

7/31/2024



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

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

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

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