

1. Applicant's Name: [REDACTED]

a. **Application Date:** 3 July 2021

b. **Date Received:** 6 July 2021

c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is bad conduct. The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, the applicant was misdiagnosed with mental health issues. The applicant was treated as having an anxiety disorder when the applicant in fact had PTSD due to trauma that the applicant had experienced and witnessed while in combat. The applicant had probable TBI due to multiple improvised explosive device (IED) blasts that directly hit the applicant's vehicle which left it incapacitated multiple times. The applicant was not given the proper treatment prior to the applicant's actions leading up to being court martialled. Had the applicant received proper treatment the applicant more than likely would not have had misconduct.

(1) While in Iraq at a Joint Security Station, an Iraqi National Police gave the applicant large amounts of medications to provide to the Iraqi Army. When the applicant was sent back to the forward operating base, the applicant decided to try a Valium which helped with getting a restful night of sleep and lessened disturbing nightmares. The applicant was reassigned to the aid station and was unable to disperse the medication to the Iraqi Army. The applicant continued to take the Valium to help relieve symptoms. After providing a Valium to another soldier, the applicant was tested for using Valium, subsequently the applicant was court martialled and discharged from the Army. There was no pattern of misconduct, this was a one-time situation.

(2) The applicant's service up until the reason for discharge was honorable as demonstrated in award of the Combat Medical Badge. The applicant further details the contentions in an allied self-authored statement provided with the application.

c. **Board Type and Decision:** In a records review conducted on 25 September 2024, and by a 5-0 vote, the Board determined the discharge was inequitable and voted to grant relief in the form of an upgrade to Under Other Than Honorable Conditions.

Please see Section 9 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. **Date of Discharge:** 23 September 2009

c. **Separation Facts:**

(1) **Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** As announced by Special Court-Martial Order Number 11, 24 August 2007, on 5 June 2007, the applicant was found guilty of the following:

(a) Charge I, in violation of Article 112a, Plea: Guilty. Finding: Guilty.

- Specification 1: On or about 13 March 2007, wrongfully distributed three 10mg tablets of Valium, commonly known as Diazepam, a scheduled IV controlled substance, while receiving special pay under 37 United States Code (USC), section 310
- Specification 2: On or about 14 March 2007, wrongfully possessed 103 10mg Valium, commonly known as Diazepam; 400 tablets of 2mg Valium; one tablet 5mg Valium; five vials containing 5mg of intravenous Valium, all of which are schedule IV controlled substances, with the intent to distribute the said controlled substances while receiving special pay under 37 USC, section 310
- Specification 3: On or about 1 March 2007 and on or about 14 March 2007, wrongfully used Valium, commonly known as Diazepam, a scheduled IV controlled substance, while receiving special pay under 37 USC, section 310

(b) Charge II, in violation of Article 92, Plea: Guilty. Finding: Guilty. On or about 14 March 2007, violated a lawful general order, by wrongfully possessing the following prescription medications without a prescription or other proper authorization:

- 10 vials of 100mg/2mL Neodol INJ
- 112 tablets of 10mg Lisinopril
- 5 tablets of 10mg Levitra
- 2 tablets of 250ug Digoxin
- 18 tablets of 50mg Neodol
- 56 tablets of 5mg Lisinopril
- 30 tablets of 100mg Chlorpromazine
- 50 tablets of 25mg Chlorpromazine
- 20 tablets of 50mg Chlorpromazine
- 3 vials of 4mg/2mL Dexamethasone Phosphate INJ
- 60 tablets of 10mg Isosorbide
- 7 tablets of 10mg BIOREACOR
- 108 tablets of 100mg Viagra
- 8 tablets of 50mg Viagra
- 100 tablets of 0.5mg IPISONE
- 2 vials of 100mg/2mL Pyridoxine HCL INJ
- 70 tablets-of 10mg Meclopram
- 3 vials of 10mg/mL Allermine INJ
- 30 tablets of 1mg METOFEN
- 2 vials of 1mg/mL Cyanocobalamin INJ
- 144 tablets of 20mg NOV ALIS
- 20 tablets of 20mg APCALIS
- 140 tablets of 25mg TRIANIL
- 26 tablets of 40mg Furosemide
- 100 tablets of 8mg Bromhexine HCL
- 9 tablets of 2mg PARKINSOL 2
- 20 tablets of 5mg PARKINSOL
- 1 vial of 20mg/mL SPASMON INJ
- 2 vials of 80mg/mL EPIGENT INJ
- 30 suppositories of 500mg Paracetamol
- 90 tablets of 2mg BUTADIN
- 30 tablets of 150mg Theophylline/90mg Guaifenesin
- 2 bottles of 5mL 0.5 percent OPTHAMOL

- 100 tablets of 1mg Trifluoperazine HCU/5mg Isopropamide
- 43 vials of 1mL Vitamin B12 INJ

(2) Adjudged Sentence: Reduction to E-1; forfeiture of \$860.00 pay per month for 4 months; to be confined for 4 months, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 24 August 2007 / Only so much of the sentence, a reduction to E-1, forfeiture of \$860.00 pay per month for 4 months, confinement for 3 months, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. That portion of the sentence pertaining to confinement had been served.

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

(5) Date Sentence of BCD Ordered Executed: 24 August 2007

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 13 September 2005 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 23 / Some College / 119
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 68W10, Health Care Specialist / 3 years, 9 months, 23 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Iraq (The applicant's Special Court-Martial Order, 24 August 2007 and reassignment order, 26 June 2007, shows the applicant served in Iraq, however, foreign service is not reflected on the DD Form 214).
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR, CMB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Report of Result of Trial shows the applicant was tried in a Summary Court-Martial on 5 June 2007. The applicant was charged with two specifications. The summary of offenses, pleas, and findings:

(a) Violation of Article 112a:

- On or about 13 March 2007, wrongful distribution of a controlled substance; guilty consistent with the plea;
- On or about 14 March 2007, wrongful possession of a controlled substance with the intent to distribute; guilty, consistent with the plea; and
- Between on or about 1 March 2007 and on or about 14 March 2007, wrongful use of a controlled substance; guilty, consistent with the plea

(b) Violation of Article 92, failure to obey a lawful general order on or about 14 March 2007: guilty, consistent with the plea.

(c) Sentence: Reduction to E-1; forfeiture of \$860.00 pay per month for 4 months; to be confined for 4 months, and to be discharged from the service with a Bad Conduct discharge.

(2) Orders 177-03E, 26 June 2007, shows for confinement, the applicant was to be reassigned to the U.S. Army Personnel Control Facility, Fort Sill, OK with temporary duty at the Regional Corrections Facility, Fort Lewis, WA with a report date of 2 July 2007.

(3) The applicant provided their Enlisted Record Brief, 3 April 2009, that shows the applicant was flagged for adverse action (AA), effective 20 March 2007; and was ineligible for reenlistment due to Other; prohibitions not otherwise identified (9X). The Assignment Eligibility Availability (AEA) code shows AEA code "7" which is for Soldiers assigned to Force Generation units and who do not meet the service remaining requirement of the life cycle management unit but were approved exceptions to remain with or be reassigned to the unit. Termination date would be the Soldier's expiration term of service date, or date eligible for return from overseas date if the Soldier is outside the continental United States. The applicant was reduced from E-3 to E-1 effective 19 June 2007.

(4) Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK, Special Court-Martial Order Number 61, 30 July 2009, shows the applicant was sentenced to reduction to E-1, forfeiture of \$860.00 pay per month for 4 months, confinement for 3 months, and a bad conduct discharge, adjudged on 5 June 2007, as promulgated in Special Court-Martial Order Number 11, Headquarters, 1st Calvary Division, Multi-National Division - Baghdad, APO AE, 24 August 2007, was finally affirmed. All rights, privileges, and property, of which the accused was deprived by virtue of the finding of guilty set aside, would be restored. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with; the bad conduct discharge was ordered executed.

i. Lost Time / Mode of Return: 76 days (Confined, 5 June 2007 - 19 August 2007) / Sentence executed

j. Behavioral Health Condition(s):

(1) The applicant provided:

(a) Chronological Record of Medical Care, 25 November 2006, shows the applicant was seen for injury from a terrorist explosion in the form of an IED blast. Due to no evidence of concussion or trauma the applicant was returned to duty.

(b) Chronological Record of Medical Care, 5 December 2006, shows the applicant was seen for injury from a terrorist explosion in the form of an IED blast this morning. The applicant has anxiety, otherwise not specified, and acoustic trauma (Explosive). The applicant was released without limitations.

(c) On 15 March 2007, the applicant's health record was updated to reflect:

- Diagnosed with major depressive disorder on 27 January
- Anxiety disorder not otherwise specified
- Major depression, single episode from 15 to 22 March 2007, was released with work/duty limitations

(d) Medical Record-Supplemental Medical Data, 6 July 2007, shows depression.

(e) Report of Medical History, 13 August 2007, the examining medical physician noted the applicant's medical conditions in the comments section:

- Zoloft since December 2006, Wellbutrin and Seroquel
- Depression and anxiety started in December 2006, probable PTSD
- Counseling for depression since December 2006

(f) Report of Medical Examination, 13 August 2007, the examining medical physician noted the applicant's medical conditions in the comments section: anxiety, depression, and PTSD for 9 months, currently on medications.

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; self-authored statement; medical records; combat action badge; enlisted record brief; civilian evaluations; college transcript; and nurse license.

6. POST SERVICE ACCOMPLISHMENTS: The applicant received an Associate of Applied Science in Practical Nursing and successfully performs their job as a registered nurse.

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

a. Section 1553, Title 10, USC (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 PTSD, 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. Department of Veterans Affairs, 38 CFR Part 3, RIN 2900-AQ95, 25 June 2024, amended their regulations regarding character of discharge determinations, expanding access to VA care and benefits for some former service members discharged under other than honorable conditions or by special court-martial. Individuals receiving undesirable, bad conduct, and other than honorable discharges may qualify for VA benefits depending on a determination made by VA. The ruling by the Department of Veterans Affairs states there are some servicemembers whose service, while not without blemish, was generally of benefit to this nation and therefore have earned the status of "veteran" and the benefits to which veterans are entitled. There are also servicemembers whose service to our nation placed them in high-risk situations which could lead to injuries or other circumstances that increase risk for behaviors or conduct that military commanders deem inappropriate. For example, as consequence of repeated traumatic exposures during combat, servicemembers are at risk of PTSD, TBI, moral injury or other combat related emotional and cognitive consequences. Symptoms of these medical conditions include changes to decision making and behaviors. It is therefore important to institute a robust compelling circumstances exception that considers the individual facts and evidence in a particular case. The compelling circumstances language in this final rule includes consideration of the length and character of service exclusive of a period of misconduct and potential mitigating reasons for the misconduct such as mental impairment, physical health, hardship, sexual abuse/assault, duress, obligations to others, and age, education, cultural background and judgmental maturity. The compelling circumstances exception, along with more specific criteria instituted herein for the willful and persistent misconduct regulatory bar will help enable servicemembers whose conduct was not dishonorable to receive the VA benefits they have earned.

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 USC; and Department of Defense Directive 1332.41 and Instruction 1332.28.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(2) 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.

(3) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(4) 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.

(5) Paragraph 3-10 states a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

(6) Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

(7) 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.

f. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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 DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

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

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

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

d. The applicant's AMHRR includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's DD Form 214 shows the applicant served 3 years, 9 months, and 26 days during which the applicant served in Iraq (time served Iraq is not annotated on the DD Form 214). The applicant was court-martialed for wrongful distribution, possession, and use of a controlled substance, and failure to obey a lawful general order. The applicant's DD Form 214 shows the applicant was discharged on 23 September 2009 under the provisions of AR 635-200, Chapter 3, by reason of Court-Martial (Other), with a characterization of service of bad conduct.

e. The applicant contends, in effect, the applicant was misdiagnosed with mental health issues. The applicant was treated as having an anxiety disorder when the applicant in fact had PTSD due to trauma that the applicant had experienced and witnessed while in combat. The applicant had probable TBI due to multiple IED blasts that directly hit the applicant's vehicle which left it incapacitated multiple times. The applicant was not given the proper treatment prior to the applicant's actions leading up to being court-martialed. Had the applicant received proper treatment the applicant more than likely would not have had misconduct. The applicant provided:

(1) Chronological Record of Medical Care, 25 November 2006, showing the applicant was seen for injury from a terrorist explosion in the form of an IED blast. Due to no evidence of concussion or trauma the applicant was returned to duty.

(2) Chronological Record of Medical Care, 5 December 2006, showing the applicant was seen for injury from a terrorist explosion in the form of an IED blast where the applicant was seated behind the driver. The applicant has anxiety, otherwise not specified, and acoustic trauma (Explosive).

(3) On 15 March 2007, the applicant's health record was updated to reflect:

- Diagnosed with major depressive disorder on 27 January
- Anxiety disorder not otherwise specified
- Major depression, single episode from 15 to 22 March 2007, was released with work/duty limitations

(4) Medical Record-Supplemental Medical Data, 6 July 2007, shows depression.

(5) Report of Medical History, 13 August 2007, the examining medical physician noted the applicant's medical conditions in the comments section:

- Zoloft since December 2006, Wellbutrin and Seroquel
- Depression and anxiety started in December 2006, probable PTSD
- Counseling for depression since December 2006

(6) Report of Medical Examination, 13 August 2007, the examining medical physician noted the applicant's medical conditions in the comments section: anxiety, depression, and PTSD for 9 months, and currently on medications.

f. The applicant contends up until the reason for discharge, the applicant's service was honorable as demonstrated in award of the Combat Medical Badge. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

g. The applicant contends there was no pattern of misconduct, that the event which led to the discharge from the Army was a one-time situation. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

h. Analyst notes block 12f (Foreign Service) of the applicant's DD Form 214 has administrative irregularities as follows:

(1) Block 12f (Foreign Service), does not reflect the total of foreign service credit for service in Iraq.

(2) AR 635-5, states from the enlisted record brief, enter the total amount of foreign service completed during the period covered in block 12c (Net Active Service this Period).

(3) This does not fall within this Board's purview; however, the applicant may apply to the ABCMR, using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

i. 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: the applicant was diagnosed while deployed with Acute Reaction to Stress, Major Depressive Disorder (MDD), and Anxiety Disorder NOS as subthreshold combat PTSD with ongoing concerns for Personality Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed while deployed with Acute Reaction to Stress, Major Depressive Disorder (MDD), and Anxiety Disorder NOS as subthreshold combat PTSD with ongoing concerns for Personality Disorder.

(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's trauma related diagnosis of Anxiety Disorder NOS during the misconduct and nexus between trauma symptoms and self-medication, the basis is partially mitigated. Specifically, using Valium is mitigated. However, possessing with intent to distribute and distributing Valium are not mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's trauma related diagnosis of Anxiety Disorder NOS mitigated the misconduct of using Valium. However, the applicant's medical diagnosis does not outweigh the applicant's misconduct of possessing with intent to distribute and distributing Valium.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends, in effect, the applicant was misdiagnosed with mental health issues. The applicant was treated as having an anxiety disorder when the applicant in fact had PTSD due to trauma that the applicant had experienced and witnessed while in combat. The applicant had probable TBI due to multiple IED blasts that directly hit the applicant's vehicle which left it incapacitated multiple times. The applicant was not given the proper treatment prior to the applicant's actions leading up to being court-martialed. Had the applicant received proper treatment the applicant more than likely would not have had misconduct.

The Board considered this contention and determined the applicant was diagnosed while deployed with Acute Reaction to Stress, Major Depressive Disorder (MDD), and Anxiety Disorder NOS as subthreshold combat PTSD with ongoing concerns for Personality Disorder.

(2) The applicant contends up until the reason for discharge, the applicant's service was honorable as demonstrated in award of the Combat Medical Badge.

The Board acknowledged the Combat Medical Badge, however, the applicant's conduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(3) The applicant contends there was no pattern of misconduct, that the event which led to the discharge from the Army was a one-time situation.

The Board considered this contention non-persuasive during its deliberations.

d. The Board determined the discharge was inequitable and voted to grant relief in the form of an upgrade to Under Other Than Honorable Conditions. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Under Other Than Honorable Conditions. The Board applied liberal consideration of all the evidence before the Board, and acknowledged the BH diagnosis of Anxiety Disorder NOS partially mitigated the applicant's misconduct of using Valium. The Board determined that the applicant's in-service factors (Length, Quality, Combat) and post-service accomplishments mitigated the remaining misconduct of possessing with intent to distribute and distributing Valium.

(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.

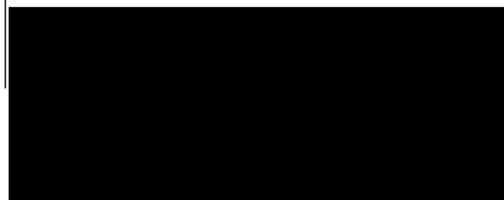
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** Under Other Than Honorable Conditions
- c. **Change Reason / SPD code to:** No change
- d. **Change RE Code to:** No change
- e. **Change Authority to:** No change

Authenticating Official:

10/11/2024



Legend:

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

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

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

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