

1. Applicant's Name:

- a. **Application Date:** 10 August 2021
- b. **Date Received:** 23 August 2021
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests reconsideration for an upgrade to honorable. In addition, the applicant requests changes to the SPD and RE codes, and narrative reason, and restoration of rank to E-4.

b. The applicant seeks relief contending, in effect, while at the unit the applicant was under mental health care because of the death of their 6 month old son. The applicant was already diagnosed with PTSD from a previous tour during Operation Iraqi Freedom III while serving in the Army National Guard. The applicant was late for formations for over sleeping due to medication and a mental health appointment, for this the applicant was given two Record of Proceedings (ROP) under Article 15, Uniformed Code of Military Justice (UCMJ). The applicant requested a hardship discharge through the chain of command, however, was discharged for pattern of misconduct. The applicant further details the contentions in an allied self-authored lay statement and two emails provided with the application.

c. **Board Type and Decision:** In a records review conducted on 3 May 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.
(Board member names available upon request)*

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 28 July 2011

c. **Separation Facts:** The information in part c (1) through (6) is obtained from the case separation file.

(1) **Date of Notification of Intent to Separate:** 19 April 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons:

- The applicant failed to report on 25 and 27 October 2010 and 12 January and 1 February 2011;
- Disrespectful to two noncommissioned officers (NCOs) on 1 February 2011; and
- Failed to obey an order on 29 October 2010 and 18 January 2011

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

(4) **Legal Consultation Date:** 26 April 2011

(5) Administrative Separation Board:

(a) On 9 May 2011, the applicant was notified to appear before an administrative separation board and advised of rights.

(b) On 8 June 2011, the administrative separation board convened and the applicant appeared with counsel. The Board determined the seven reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

(c) On 7 July 2011, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 7 July 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 July 2009 / 3 years and 10 weeks

b. Age at Enlistment / Education / GT Score: 25 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13B10, Cannon Crewmember / 10 years, 6 months, and 11 days

d. Prior Service / Characterizations: ARNG, 18 January 2001 - 17 July 2007 / HD
IADT, 30 May 2001 - 10 August 2001 / HD
(Concurrent Service)
ADT, 29 May 2002 - 27 July 2002 / HD
(Concurrent Service)
AD, 22 June 2004 - 30 November 2005 / HD
(Concurrent Service)
USARCG(REINF)18 July2007-20 February 2008/NA
ARNG, 21 February 2008 - 29 July 2009 / HD

e. Overseas Service / Combat Service: SWA / Kuwait and Iraq (19 November 2004 - 25 October 2005)

f. Awards and Decorations: AGCM, NDSM, GWOTSM, ASR, OSR, ICM, AFRM-M, OSB-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Three developmental counseling forms for failure to report two times and disobeying an order.

(2) Military Police Report, dated 18 April 2010, shows the applicant was apprehended for: Simple Assault (On Post) and Spouse Abuse - Civilian Female Victim (On Post).

(3) CG Article 15, 23 November 2010, for failing to go at the time prescribed to the appointed place of duty on or about 25 and 27 October 2010. Also, for failing to obey a lawful order from the first sergeant on or about 29 October 2010. The punishment consisted of a reduction from E-4 to E-3; forfeiture of \$448.00 (suspended); and extra duty for 14 days. On 23 November 2010, the applicant appealed and submitted additional matters. On 30 November 2010, the applicant's appeal was granted. The punishment was changed to reduction from E-4 to E-3 (suspended); forfeiture of \$448.00 pay per month for 7 days (suspended for 60 days); and extra duty for 14 days.

(4) Two developmental counseling forms for missing formation and disobeying a lawful order.

(5) Record of Supplementary Action Under Article 15, UCMJ, 25 January 2011, shows the suspended portion of the punishment (reduction from E-4 to E-3 and forfeiture of \$448.00) imposed on 30 November 2010, was vacated for: failing to go at the time prescribed to the appointed place of duty on or about 12 January 2011 and failing to obey a lawful order on or about 18 January 2011.

(6) Five developmental counseling forms for failure to report, disrespecting two NCOs, failure to comply with safety, and failure to follow a direct order from an NCO.

(7) DA Form 4833 (Commander Report of Disciplinary or Administrative Action), 10 February 2011, shows the applicant received a 72 hour no contact order for Simple Assault (On Post) and Spouse Abuse - Civilian Female Victim (On Post) on 18 April 2010.

(8) DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 11 February 2011, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 9 February 2011.

(9) FG Article 15, 24 February 2011, for failing to go at the time prescribed to the appointed place of duty and for being disrespectful in deportment towards two NCOs during separate instances on or about 1 February 2011. The punishment consisted of a reduction from E-3 to E-2 (suspended); forfeiture of \$822.00 pay per month for 2 months (suspended); and extra duty 45 days.

(10) On 30 March 2011, the commander initially initiated action to separate the applicant for failing to be at the appointed place of duty, for being disrespectful to two NCOs, and failing to obey an order on multiple occasions.

(11) On 31 March 2011, the applicant received counsel and requested personal appearance before an administrative separation board.

(12) On 7 April 2011, the brigade commander recommended the applicant be separated from the U.S. Army with an under other than honorable conditions character of service.

(13) On 19 April 2011, the brigade commander re-notified the applicant that they was initiating action to separate the applicant for a pattern of misconduct.

(14) On 26 April 2011, the applicant for a second time received counsel and requested personal appearance before an administrative separation board.

(15) On 28 April 2011, the staff judge advocate recommended the brigade commander to direct an administrative separation board. On this same date, the brigade commander directed an administrative separation board.

(16) On 9 May 2011, the applicant acknowledged notification to appear before the administrative separation board.

(17) Memorandum, Headquarters, 82nd Airborne Division, Fort Bragg, NC, 20 May 2011, shows the Inspector General requested the separation approval authority to address a rehabilitative reassignment for the applicant per AR 635-200, paragraph 1-16.

(18) CG Article 15, 31 May 2011, for failing to go at the time prescribed to the appointed place of duty on or about 24 February, 17 March (0630 and 0915 accountability formations), 29 March, and 5 April 2011 and for being disrespectful in deportment toward the first sergeant on or about 9 May 2011. The punishment consisted of a reduction from E-3 to E-1; forfeiture of \$342.00 pay; and extra duty 14 days.

(19) Headquarters and Headquarters Battery memorandum, Action Taken by Separation Authority, 7 June 2011, shows the company commander requested that the rehabilitative transfer requirement in paragraph 1-16, AR 635-200 be waived because the applicant was transferred to their battery from Alpha Battery on 15 October 2010 because the applicant was not deployable due to the lack of a family care plan. While in Alpha Battery the applicant was counselled for multiple disciplinary infractions, including disrespect, domestic violence, and failed to report, the same type of misconduct for which the applicant was currently being recommended for separation.

(20) On 8 June 2011, the administrative separation board convened, the applicant was present with counsel. The Board determined the seven allegations listed in the notification of separation (see paragraph 3c(2) above) were supported by a preponderance of the evidence. The board recommended the applicant's discharge with a characterization of service of general (under honorable conditions).

(21) Fort Bragg Trial Defense Service Memorandum, Request to Suspend Separation of (Applicant), 20 June 2011, states the applicant's problems were caused by a combination of their mental health medications and issues related to caring for their son. The applicant repeatedly requested a rehabilitative transfer in order to salvage their career. The applicant also requested a compassionate reassignment to be closer to their soon-to-be-ex-wife during their divorce proceedings and custody battle. The applicant has even informed the command that they would be amenable to a mental health chapter if it would allow them to come back into the Army when they worked through their depression. All of these suggested solutions were rejected.

(22) On 28 June 2011, the administrative law attorney found the administrative separation board legally sufficient.

(23) On 7 July 2011, the staff judge advocate recommended the brigade commander to approve the findings and recommendations of the administrative separation board and separate the applicant with a characterization of service of general, under honorable conditions. On this same date, the separation authority approved the findings and recommendation of the administrative separation board and directed the applicant's discharge with a characterization of service of general, under honorable conditions.

(24) The applicant's Enlisted Record Brief, 7 July 2011, shows the applicant was flagged for adverse action (AA), effective 27 October 2010 and weight control program (KA), effective 2 November 2010; and was ineligible for Other; prohibitions not otherwise identified (9X). The

Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions.

(25) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant had not completed the first full term of service in the Regular Army. The applicant was discharged under the authority of AR 635-200, paragraph 14-12b, with a narrative reason of Pattern of Misconduct. The DD Form 214 was authenticated with the applicant's electronic signature. The applicant was reduced from E-3 to E-1 effective 31 May 2011.

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

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

(1) **Applicant provided:** VA Service-Connected Disability Letter, 14 March 2024, showing the applicant was rated 100 percent disabled for PTSD.

(2) **AMHRR Listed:**

(a) Report of Medical History, 3 February 2011, the examining medical physician noted the applicant's medical conditions in the comments section: The applicant was being seen at mental health for PTSD and sleep trouble.

(b) Report of Behavioral Health Evaluation, 14 February 2011, shows the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements per chapter, AR 40-501. There is no evidence of an emotional or mental disorder of psychiatric significance at this time to warrant disposition through medical channels. The applicant WAS diagnosed with adjustment disorder with mixed emotional features (by HX).

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; two DD Forms 214; Lay Statement; VA Benefits Letter; VA Service-Connected Disability Compensation Letter; VA Service-Connected Disability Letter; VA Summary of Benefits Letter; and two emails.

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

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval

Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

(1) Paragraph 1-16 (Counseling and rehabilitative requirements), states except as otherwise indicated in this regulation, commanders will ensure that adequate counseling and

rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood (see paragraph 5-8)
- Personality disorder (see paragraph 5-13)
- Other designated physical or mental conditions (see paragraph 5-17)
- Entry-level performance and conduct (see chapter 11)
- Unsatisfactory performance (see chapter 13)
- Minor disciplinary infractions or a pattern of misconduct (see paragraphs 14-12a and b)
- Failure to meet body fat standards (see chapter 18)

(a) Other than trainees. Soldiers not in training status will be locally reassigned at least once, with a minimum of 3 months of duty in each unit. Reassignment should be between battalion-sized units or between brigade-sized or larger units when considered necessary by the local commander.

(b) The rehabilitative transfer requirements in chapters 11, 13, and 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier. Such circumstances may include:

- Two consecutive failures of the Army physical fitness test
- Pregnancy while in entry-level status
- Highly disruptive or potentially suicidal behavior, particularly in reception battalions
- Active resistance of rehabilitative efforts
- Soldiers assigned to small installations or at remote locations
- Situations in which transfer to a different duty station would be detrimental to the indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth)

(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.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes 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.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and

conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

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

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 reconsideration for an upgrade to honorable. In addition, the applicant requests changes to the SPD and RE codes, and narrative reason, and restoration of rank to E-4. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows they served 1 year, 11 months, and 28 days during this net active service period in the Regular Army. The applicant received eight developmental counseling forms, for various acts of misconduct between 2010 and 2011. The applicant also received a FG and CG ROP under Article 15, UCMJ, for various acts of misconduct in 2010 and 2011. The applicant was discharged on 28 July 2011 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation,

entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12b, is "JKA."

e. The applicant requests a RE code change. Soldiers processed for separation are assigned reenry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes if appropriate.

f. The applicant contends, in effect, while at the unit the applicant was under mental health care because of the death of their 6 month old son and had already been diagnosed with PTSD from a previous tour during Operation Iraqi Freedom III while serving in the Army National Guard. The applicant provided VA Service-Connected Disability Letter, 14 March 2024, showing the applicant was rated 100 percent disabled for PTSD. The AMHRR shows:

(1) Report of Medical History, 3 February 2011, the examining medical physician noted the applicant's medical conditions in the comments section: The applicant was being seen at mental health for PTSD and sleep trouble.

(2) Report of Behavioral Health Evaluation, 14 February 2011, shows the applicant was diagnosed with adjustment disorder with mixed emotional features (by HX).

g. The applicant contends, in effect, they was late for formations for over sleeping due to medication and a mental health appointment, for this the applicant was given two ROPs under Article 15, UCMJ. The AMHRR shows:

(1) Fort Bragg Trial Defense Service Memorandum, Request to Suspend Separation of (Applicant), 20 June 2011, stating the applicant's problems were caused by a combination of their mental health medications and issues related to caring for their son.

(2) The applicant received two ROPs under Article 15, UCMJ for failing to go at the time prescribed to the appointed place of duty on three occasions, for failing to obey a lawful order from the first sergeant, and for being disrespectful in deportment towards two NCOs during separate instances.

h. The applicant contends, in effect, they requested a hardship discharge through the chain of command, however, was discharged for pattern of misconduct. The AMHRR contains:

(1) Headquarters and Headquarters Battery memorandum, Action Taken by Separation Authority, 7 June 2011, shows the company commander requested that the rehabilitative transfer requirement in paragraph 1-16, AR 635-200 be waived because the applicant was

transferred to their battery from Alpha Battery on 15 October 2010 because the applicant was not deployable due to the lack of a family care plan. While in Alpha Battery the applicant was counselled for multiple disciplinary infractions, including disrespect, domestic violence, and failed to report, the same type of misconduct for which the applicant was currently being recommended for separation.

(2) Fort Bragg Trial Defense Service Memorandum, Request to Suspend Separation of (Applicant), 20 June 2011, stating the applicant repeatedly requested a rehabilitative transfer in order to salvage their career. The applicant also requested a compassionate reassignment to be closer to their soon-to-be-ex-wife during their divorce proceedings and custody battle. The applicant has even informed the command that they would be amenable to a mental health chapter if it would allow them to come back into the Army when they worked through their depression. All of these suggested solutions were rejected.

(3) AR 635-200, paragraph 1-16 (Counseling and rehabilitative requirements), states Soldiers not in training status will be locally reassigned at least once, with a minimum of 3 months of duty in each unit. Reassignment should be between battalion-sized units or between brigade-sized or larger units when considered necessary by the local commander. The rehabilitative transfer requirements in chapters 11, 13, and 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

i. The applicant requests restoration of rank to E-4. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

j. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Post-Traumatic Stress Disorder (100% Service Connected). [Note-Diagnoses of Depression, Bereavement and Adjustment Disorder are subsumed under Post-Traumatic Stress Disorder diagnosis.]

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection for Post-Traumatic Stress Disorder establishes it began and/or occurred during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating Behavioral Health condition, Post-Traumatic Stress Disorder. As Post-Traumatic

Stress Disorder is associated with avoidant behaviors and difficulty with authority figures, there is a nexus between the applicant's diagnosis of Post-Traumatic Stress Disorder, the applicant's multiple Failure to Report, the applicant's offense of disrespecting an NCO and the applicant's two offenses of failing to obey orders. While the applicant's diagnosis of Post-Traumatic Stress Disorder mitigates the applicant's offenses of Failure to Report disrespectfulness and disobeying of orders, in the Behavioral Health advisor's opinion, the totality of the misconduct outweighs any mitigation offered under liberal consideration.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends, in effect, while at the unit the applicant was under mental health care because of the death of their 6 month old son and had already been diagnosed with PTSD from a previous tour during Operation Iraqi Freedom III while serving in the Army National Guard. The Board considered this contention and determined that there is insufficient evidence in the applicant's official record or provided by the applicant that the applicant was not provided sufficient access to mental health care resources. Therefore, no change is warranted.

(2) The applicant contends, in effect, they were late for formations for over sleeping due to medication and a mental health appointment, for this the applicant was given two Record of Proceedings under Article 15, UCMJ. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends, in effect, they requested a hardship discharge through the chain of command, however, was discharged for pattern of misconduct. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

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 carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and the published DOD guidance for liberal consideration of discharge upgrade requests. Although the applicant's PTSD mitigates the FTRs, and disobeying orders, the Board concurred with the medical advisor that the totality of the misconduct by the applicant outweighs any mitigation offered under liberal consideration. Based on a preponderance of evidence, the Board determined that the dishonestly, multiple IPV's and FAP interventions, and failure to support his children, that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. The Board also considered the applicant's contention regarding the applicant's assertion of requesting a hardship discharge through the chain of command, however, was discharged for pattern of misconduct and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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authority, and the applicant was provided full administrative due process. Therefore, the applicant's General 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 pretexts, and the reason the applicant was discharged was both proper and equitable.

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

7/30/2024

X

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

Legend:

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

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

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

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