

1. Applicant's Name: [REDACTED]**a. Application Date:** 10 August 2021**b. Date Received:** 10 August 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant through counsel, requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason.

b. The applicant through counsel, seeks relief contending, in effect, the applicant only had 4 months left to finish their contract and be able to enlist in the active Air Force, which the applicant told their commander and first sergeant, and they were not ok. Therefore, they lied and said the applicant failed the Army Physical Fitness Tests (APFT). The applicant has a passing APFT.

(1) Counsel contends, in effect, the applicant served honorably for 3 years and 8 months with no history of performance or authority issues until deploying to Kuwait for Operation Enduring Freedom. Even with the deployment conflicts documented in the applicant's service record, the applicant's discharge was improper and inequitable. The discharge was improper as the narrative reason for the separation, the failure of physical standards, is clearly contradicted on examination of the applicant's service record.

(a) In August 2019, the company commander recommended the applicant for involuntary separation after the applicant refused to sign a communications hand receipt and subsequently misjudging an instruction by the company armorer, the applicant declined to clean the applicant's weapon. As a constructive measure, the applicant was instructed to carry an M249 machine gun at all times for 2 days, a directive the applicant believed they were unable to execute due to the lack of a secure locker in the applicant's deployment quarters to store the machine gun while asleep.

(b) In recommending the applicant's separation under AR 635-200, the company commander wrote that "between on or about 1 August 2018 and on or about 31 January 2019, [applicant] failed two Army Physical Fitness Tests." The applicant's service record lacks any evidence to substantiate this claim.

(c) Character letters (see Exhibits G, J, and K), addressing the time period that the company commander alleges the applicant failed two APFTs, speaks highly of the applicant's performance and having earned an honorable discharge. They underscored the applicant's exceptional work ethic, reliability, and respectful demeanor.

(2) Counsel contends, in effect, the applicant's discharge was inequitable as the purported misconduct is directly attributable to the applicant's service-connected Major Depressive Disorder (MDD) with anxious distress. The severity of this significant mental health condition should be considered a mitigating factor for the applicant's performance failures.

(a) In contrast to the praise the applicant received from former superior officers, in recommending the applicant's separation, the company commander stated that the applicant "demonstrated laziness [and] lack of initiative ... [was] unwilling to perform any task outside of [applicant's] MOS [laziness, lack of initiative, and were unwilling to perform any task outside of the applicant's [military occupational specialty]." (see Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation) This change in performance is clear evidence of the mental health condition the applicant was struggling with at the time (service connected MDD with anxious distress).

(b) Despite the applicant's honest disclosure of mental health challenges on the Medical Questionnaire on 12 August (see Exhibit L, Report of Medical History), the subsequent evaluation conducted on 13 August, which purportedly assessed the applicant for depression, incredibly determined that the applicant had "[n]o duty limitations due to behavioral health reasons." (see Exhibit N - Mental Status Evaluation (MSE)) Given the previous day's disclosures, this assessment by the medical examiner appears highly improbable. The implausibility of an absence of diagnosis becomes even more apparent when scrutinizing the applicant's 12 August Medical Questionnaire (see Exhibit L, Report of Medical History). Remarkably, this document was signed by the medical examiner on 15 September 2019 (see Exhibit L, Report of Medical History), roughly a month after the applicant's initial disclosure and subsequent evaluation for mental health conditions, indicating it was not examined on 12 August or during the applicant's mental health evaluation on 13 August (see Exhibit N - MSE). The applicant's mental health struggles are clearly exhibited by the stark change in performance before and during deployment and in the service record. Despite this, the applicant's command failed to recognize or offer aid to the applicant for mental health struggles, instead choosing to inequitably discharge the applicant. The applicant's mental health struggles and the circumstances leading to an inequitable involuntary separation are precisely the type of situations that Under Secretary of Defense Kurta intended to provide relief for.

(c) When examining the applicant's failure to carry out two instructions, one of which the applicant did not fully comprehend and the other the applicant sincerely believed to be unlawful. It is important to take into account the context of the applicant being a native Spanish speaker grappling with MDD with anxious distress. It is imperative to acknowledge that taking punitive action against an otherwise outstanding soldier in such circumstances represents a clear departure from the principles of fairness and equity.

c. Board Type and Decision: In a records review conducted on 18 October 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's in-service factors (length, quality, and combat service) and letters of support outweighed the applicant's misconduct (failed two APFTs). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. The board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

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: Physical Standards / AR 635-200, Chapter 13-2E / JFT / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 27 December 2019

c. Separation Facts: The applicant's AMHRR contains the case separation file. However, the applicant provided Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation, 1 October 2019, which is described below in 3c (2) and (3).

(1) Date of Notification of Intent to Separate: 1 October 2019

(2) Basis for Separation: The applicant was informed of the following reasons: Between on or about 1 August 2018 and on or about 31 January 2019, the applicant failed two APFTs. The applicant refused to sign for the communications hand receipt as the Communication Sergeant. The applicant demonstrated a lack of resiliency and were reduced to tears in a situation where the command team often felt they were negotiating with the applicant to take responsibility of the applicant's equipment. In the field environment, the applicant demonstrated MOS. As it pertains to the applicant's characterization of service, on or about 10 August 2019, the applicant was given an order to clean the applicant's weapon and the applicant refused. As a result, the applicant left the applicant's weapon unattended and did not come back to turn it in. On or about 10 August 2019, the applicant was given an order to sign out an M249 and carry it with the applicant at all times, as corrective action for leaving the applicant's weapon unattended, until 12 August 2019; an order the applicant refused to follow.

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

(4) Legal Consultation Date: 4 October 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 October 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 April 2016 / 4 years

b. Age at Enlistment / Education / GT Score: 21 / High School Graduate / 98

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25U10, Signal Support System Specialist / 3 years, 8 months, and 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea, SWA / Kuwait (28 February 2019 – 9 October 2019)

f. Awards and Decorations: AAM-2, AGCM, NDSM, GWOTEM, KDSM, ASR, OSR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) The applicant provided Exhibit H - APFT Scorecard showing the applicant passed a record APFT on 2 April 2019.

(2) Developmental Counseling Form, 19 July 2019, states the counseling was to reemphasize the conversation that took place between Lieutenant Colonel B__ and the

applicant regarding the applicant's duties and responsibilities as a senior specialist. The applicant received a non-promotion counseling from Sergeant P___ on 25 June 2019 and as a result of this counseling the applicant was barred for lack of performance and undesired to advance in the military. The applicant appeared to have a fundamental misunderstanding of what it meant to be a leader. During the appeal process, the applicant was given the opportunity to reassess and prepare themselves to attend the E-5 promotion board in 90 days following with a plan if the applicant wanted to pursue an expiration term of service.

(3) Memorandum for Record, subject: Commander's Performance Evaluation of (Applicant), 9 August 2019, states in part, the applicant served in the B company communication's sergeant position as a 25U10 from August 2018 to January 2019. During this time the applicant failed two record APFT and multiple diagnostics. The applicant refused to sign for the company communications hand receipt and was counseled on this issue multiple times. And the applicant demonstrated a generalized laziness, lack of initiative, and was unwilling to fulfill any task outside the applicant's MOS. The B Company Commander barred the applicant from reenlistment and began the process to initiate UCMJ and a chapter.

(4) The applicant provided Exhibit E - Developmental Counseling Form, 10 August 2019, showing the applicant was counseled for failure to obey order or regulation by failing to take and clean the applicant's weapon from 10-12 August 2019. The applicant disagreed with the information in the counseling and stated that the applicant did not have a cage in their room to secure the weapon.

(5) Developmental Counseling Form, 10 August 2019, shows the applicant was counseled on their duties and responsibilities in a supervisory position. The applicant disagreed with the information in the counseling.

(6) The applicant provided Exhibit F - DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 12 August 2019, shows the applicant was flagged for Involuntary separation/field initiated (BA), effective 12 August 2019.

(7) Developmental Counseling Form, 13 August 2019, shows the applicant was counseled for initiation of an involuntary separation under chapter 13, AR 635-200, due to unsatisfactory performance. The applicant disagreed with the information in the counseling, stating they was still trying to improve.

(8) Developmental Counseling Form, 2 September 2019, shows the applicant received an initial counseling from the supply noncommissioned officer.

(9) The applicant provided:

(a) Exhibit L - Report of Medical History, 12 August 2019, the applicant selected that the applicant had nervous trouble of any sort (anxiety or panic attacks), frequent trouble sleeping, and depression or excessive worry. On 15 September 2019, the examining medical physician noted the applicant's medical conditions in the comments section: Due to a stressful unit and chapter, the applicant was previously encouraged to go to behavioral health but did not go. The applicant was recently cleared by behavioral health.

(b) Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation, 1 October 2019, shows the commander recommended the applicant be separated under AR 635-200, Chapter 13, Unsatisfactory Performance.

(c) Exhibit I - Performance counseling, 4 October 2019, states the applicant was reassigned in September 2019 to be a supply clerk in C Company. The applicant was praised for always showing up to work on time with eagerness to work and learn, and the applicant's initiative to learn more about being a supply clerk.

(10) Memorandum for Record, subject: Letter of Character, 7 October 2019, the applicant requested to be retained in the Army because of their obligation to the U.S. and the constitution, the applicant's dedication to the unit, and their MOS knowledge.

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

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

(1) **Applicant provided:**

(a) Exhibit C - Department of Veterans Affairs Disability Rating Decision, 14 December 2022, shows the applicant was rated 80 percent disabled (70 percent for Major Depressive Disorder with Anxious Distress).

(b) Exhibit N - Report of MSE, 13 August 2019, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD, depression, and TBI with negative results. The command was advised to consider the influence of these conditions. The applicant was diagnosed with occupational problem.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4j (1).

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, Online; DD Form 293; Legal Brief with all listed enclosures A through N (includes Enlisted Record Brief, three third-party letters, partial case separation packet); AGCM.

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 1-17 (previously paragraph 1-16) (Counseling and rehabilitative requirements), states:

(a) Except as otherwise indicated in this regulation, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for Unsatisfactory performance (see chapter 13).

(b) Counseling. When a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of their deficiencies. At least one formal counseling session is required before separation proceedings may be initiated. In addition, there must be evidence that the Soldier's deficiencies continued after the initial formal counseling.

- Each counseling session must be recorded in writing on DA Form 4856 (Developmental Counseling Form)
- The Soldier's counseling or personal records must reflect that they were formally counseled concerning their deficiencies and given a reasonable opportunity to overcome or correct them

(c) 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.

(d) Waiver of the counseling requirement is not authorized. 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 APFT of record
- 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) Paragraph 3-7a states 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) Paragraph 3-7b states 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 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(5) Paragraph 13-2c (previously paragraph 13-2e) states in pertinent part, separation proceedings will be initiated for Soldiers without medical limitations that have two consecutive

failures of the Army Physical Fitness Test. The reason for discharge will be shown as physical standards.

(6) Paragraph 13-4, before initiating separation action against a Soldier, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. Paragraph 1-17 prescribes the counseling and rehabilitation requirements.

(7) Paragraph 13-8 stipulates the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

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

e. Army Regulation 635-5-1 (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 "JFT" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, in effect at the time, Chapter 13-2e, Physical standards.

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 through counsel, requests an upgrade to honorable, changes to the SPD and RE codes, and narrative reason. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years, 8 months, and 3 days of service during which the applicant served in Korea for 1 year and 28 days (8 March 2017 - 4 April 2018) and in Kuwait for 7 months and 12 days (28 February 2019 - 9 October 2019). The applicant passed a record APFT on 2 April 2019. The applicant received four developmental counseling forms between July and August 2019 to reemphasize duties and responsibilities as a senior specialist, non-promotion, bar for lack of performance and undesired to advance in the military, and for failure to obey order or regulation, duties and responsibilities in a supervisory position, and initiation of an involuntary separation. In September 2019, the applicant was reassigned to the supply section and was praised by the supervisor in an October 2019 monthly counseling. The applicant was discharged under the provisions of AR 635-200, Chapter 13, paragraph 13-2e, by reason of physical standards with a characterization of service of general (under honorable conditions).

c. The applicant through counsel contends, in effect, the narrative reason for the discharge should be changed.

(1) The applicant was separated under the provisions of Chapter 13, paragraph 13-2e, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Physical standards," and the separation code is "JFT." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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.

(2) The applicant provided Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation, 1 October 2019, which shows the separation authority approved the applicant to be separated under AR 635-200, Chapter 13, Unsatisfactory Performance. The narrative reason specified by Army Regulations for a discharge under Chapter 13, AR 635-200 is "Unsatisfactory Performance," and the separation code is "JHJ."

d. The applicant through counsel contends, in effect, the SPD code should be changed.

(1) 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 to track types of separations. The SPD code specified by Army Regulations, in effect at the time, for a discharge under Chapter 13, paragraph 13-2E, is "JFT."

(2) The applicant provided Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation, 1 October 2019, which shows the separation authority approved the applicant to be separated under AR 635-200, Chapter 13, Unsatisfactory Performance. The SPD code specified by Army Regulations, in effect at the time, for a discharge under Chapter 13, is "JHJ."

e. The applicant through counsel requests a RE code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 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 through counsel contends, in effect, the applicant only had 4 months left to finish the applicant's contract and be able to enlist in the active Air Force, which the applicant told to the commander and first sergeant, and they were not ok. Therefore, they lied and said the applicant failed the APFT. The discharge was improper as the narrative reason for the separation, the failure of physical standards, is clearly contradicted on examination of the applicant's service record.

(1) The applicant provided Exhibit H - DA Form 705 (APFT Scorecard), 2 April 2019, showing the applicant passed the APFT. This is after the dates the company commander states in Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation, 1 October 2019, that the applicant failed two APFTs (between on or about 1 August 2018 and on or about 31 January 2019).

(2) The applicant's AMHRR is void of evidence to substantiate the applicant failed two APFTs (APFT Scorecard and/or counseling).

(3) AR 635-200, paragraph 1-17 (previously paragraph 1-16) states commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for Unsatisfactory performance (see chapter 13). The Soldier's counseling or personal records must reflect that they were formally counseled concerning their deficiencies and given a reasonable opportunity to overcome or correct them.

g. Counsel contends, in effect, the applicant served honorably for 3 years and 8 months with no history of performance or authority issues until deploying to Kuwait for Operation Enduring Freedom. Even with the deployment conflicts documented in the applicant's service record, the applicant's discharge was improper and inequitable. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

h. Counsel contends, in effect, the applicant's discharge was inequitable as the purported misconduct is directly attributable to the applicant's service connected MDD with anxious distress. In contrast to the praise the applicant received from former superior officers, in recommending the applicant's separation, the company commander stated that the applicant "demonstrated laziness [and] lack of initiative ... [was] unwilling to perform any task outside of [applicant's] MOS." (see Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation), 1 October 2019) This change in performance is clear evidence of the mental health condition the applicant was struggling with at the time (service-connected MDD with anxious distress). The severity of this significant mental health condition should be considered a mitigating factor for the applicant's performance failures. The applicant provided:

(1) Exhibits G, J, and K - character letters, address the time period that the company commander alleges the applicant failed two APFTs, which speaks highly of the applicant's performance and having earned an honorable discharge. They underscored the applicant's exceptional work ethic, reliability, and respectful demeanor.

(2) Exhibit C - Department of Veterans Affairs Disability Rating Decision, 14 December 2022, shows the applicant was rated 80 percent disabled (70 percent for Major Depressive Disorder with Anxious Distress).

(3) Exhibit N - Report of MSE, 13 August 2019, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was diagnosed with occupational problem.

i. Counsel contends, in effect, the applicant reported mental health challenges on 12 August 2019 (see Exhibit L, Report of Medical History), however, this document was signed by the medical examiner on 15 September 2019, roughly a month after the applicant's initial disclosure and subsequent evaluation for mental health conditions. The subsequent evaluation conducted on 13 August (see Exhibit N - MSE), purportedly assessed the applicant for depression, incredibly determined that the applicant had "[n]o duty limitations due to behavioral health reasons." The applicant's mental health struggles are clearly exhibited by the stark change in performance before and during deployment and in the service record. Despite this, the applicant's command failed to recognize or offer aid to the applicant for mental health struggles, instead choosing to inequitably discharge the applicant. The applicant provided Exhibit L - Report of Medical History, 12 August 2019, which shows on 15 September 2019, the examining medical physician noted the applicant's medical conditions in the comments section: Due to a stressful unit and chapter, the applicant was previously encouraged to go to behavioral health but did not go. The applicant was recently cleared by behavioral health.

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 diagnosis: Major Depressive Disorder (MDD).

(2) Did the condition exist, or experience occur during military service? **Yes.** By nature of service connection, VA assumes although depressive symptoms did not result in a diagnosis in-service, they were present to some extent.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that MDD is unrelated to failing APFTs; although it's noted the applicant asserts, he did not fail them. Regarding the misconduct underlying the characterization, while MDD can create symptoms of irritability and difficulty concentrating, documentation does not support these symptoms were present and/or rose to the level of even mild impairment to contribute to the misconduct. Accordingly, there is no mitigation for these either. However, the Board can still consider reported emotional distress referenced in separation paperwork, e.g., "reduced to tears," "generalized laziness, lack of initiative."

(4) Does the condition or experience outweigh the discharge? **No.** The board considered the opinion of the Board's Medical Advisor, a voting member, and the available

evidence did not support a conclusion that the applicant's Major Depressive Disorder (MDD) outweighed the basis for the applicant's separation (failed two APFTs).

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, the narrative reason and SPD code for the discharge and reentry code should be changed. The board considered the totality of the applicant's service record and voted not to change the applicant's narrative reason and SPD code because there were no medical mitigating factors for the board to consider. Therefore, the narrative reason, SPD code and reentry code were proper and equitable.

(2) The applicant through counsel contends, in effect, the applicant only had 4 months left to finish their contract and be able to enlist in the active Air Force, which the applicant told to the commander and first sergeant, and they were not ok. Therefore, they lied and said the applicant failed the APFT. The discharge was improper as the narrative reason for the separation, the failure of physical standards, is clearly contradicted on examination of the applicant's service record. The board considered this contention and determined that the applicant received the appropriate SPD code for the discharge specified by AR 635-200, paragraph 13-2e / JFT. However, the board voted to upgrade the characterization to honorable based on in-service factors of length, quality, combat service, and letters of support.

(3) Counsel contends, in effect, the applicant served honorably for 3 years and 8 months with no history of performance or authority issues until deploying to Kuwait for Operation Enduring Freedom. Even with the deployment conflicts documented in the applicant's service record, the applicant's discharge was improper and inequitable. The board considered this contention during proceedings, but ultimately did not address the contention due to granting an upgrade to Honorable based on the applicant's service (length, quality, combat) and letters of support outweighing the applicant's two ACFT failure - basis for separation.

(4) Counsel contends, in effect, the applicant's discharge was inequitable as the purported misconduct is directly attributable to the applicant's service connected MDD with anxious distress. In contrast to the praise the applicant received from former superior officers, in recommending the applicant's separation, the company commander stated that the applicant "demonstrated laziness [and] lack of initiative ... [was] unwilling to perform any task outside of [applicant's] MOS." (see Exhibit D, Memorandum for (Applicant), Commander Notification of Initiation of Separation), 1 October 2019) This change in performance is clear evidence of the mental health condition the applicant was struggling with at the time (service-connected MDD with anxious distress). The severity of this significant mental health condition should be considered a mitigating factor for the applicant's performance failures. The board considered this contention and granted an upgrade to Honorable based on the applicant's service (length, quality, combat) and letters of support outweighing the applicant's two ACFT failure - basis for separation.

(5) Counsel contends, in effect, the applicant reported mental health challenges on 12 August 2019 (see Exhibit L, Report of Medical History), however, this document was signed by the medical examiner on 15 September 2019, roughly a month after the applicant's initial disclosure and subsequent evaluation for mental health conditions. The subsequent evaluation conducted on 13 August (see Exhibit N - MSE), purportedly assessed the applicant for depression, incredibly determined that the applicant had "[n]o duty limitations due to behavioral health reasons." The applicant's mental health struggles are clearly exhibited by the stark change in performance before and during deployment and in the service record. Despite this, the applicant's command failed to recognize or offer aid to the applicant for mental health struggles, instead choosing to inequitably discharge the applicant. The board considered this

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contention during proceedings, but ultimately did not address the contention due to the decision to grant an upgrade to Honorable based on the applicant's service (length, quality, combat) and letters of support outweighing the applicant's two ACFT failure - basis for separation.

c. The board determined the discharge is inequitable based on the applicant's service (length, quality, combat) as well as the circumstances surrounding the discharge. Therefore, the board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable based on the applicant's in-service mitigating factors (length, quality, and combat service). Thus, the prior characterization is no longer appropriate.

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

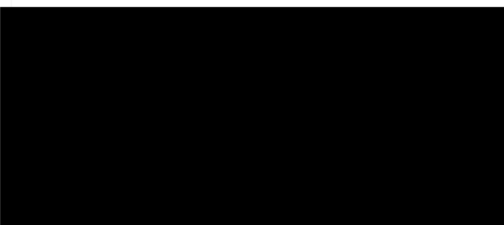
(3) The reentry code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

10/29/2024



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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs