

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 November 2011**b. Date Received:** 24 November 2011**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 General (Under Honorable Conditions). The applicant requests an honorable and a change of reason for their separation.

b. The applicant seeks relief, contending their discharge was based on behaviors exhibited after experiencing a physical assault while serving, stating liberal consideration should be granted in the evaluation of their character of discharge and it should be changed to properly fit the circumstances regarding their release.

(1) There is evidence to conclude that at the time of their discharge they were suffering from undiagnosed posttraumatic stress disorder (PTSD) and the behavior from their undiagnosed medical condition was used in the discharge proceedings. Action was taken to separate them for misconduct when it was not clearly established that a medical condition was the direct or substantial contributing cause for my conduct. The discharge received was unfair because the commander at the time, recommended them for an Honorable discharge, however, was told that a general (under honorable conditions) was the only option available for a pattern of misconduct discharge. This false information also led to them receiving a general discharge, instead of an Honorable discharge that their company commander initially recommended.

(2) There is evidence to conclude, the undiagnosed medical condition the applicant was suffering from, mitigated their misconduct. During their service, they were labeled as having an adjustment disorder and Multiple Personalities Disorder. They were placed on Celexa and Ambien to assist them in coping with their medical diagnosis. After they were released, they later learned that they were misdiagnosed while in the service and was actually suffering from PTSD, stating PTSD symptoms can also seem similar to an adjustment disorder because both are linked with anxiety and other similar symptoms.

(3) The Department of Veterans Affairs (VA) made the decision for their service connection for PTSD and granted them with an evaluation of fifty (50) percent. The evidence that was used to make this decision was their service records for the period of 3 September 2009 through 7 November 2011. While serving in the Army, they served their country honorably, as noted in the VA's reasons for their decision related to their PTSD. The VA noted prior to the physical assault, there was no history of disciplinary or mental health issues documented in their service records. The certainty in which they served their country with honor can also be illustrated in their commander's recommendation they received an Honorable discharge, despite a few infractions due to the behavior surrounding their PTSD, their service was otherwise faithful, loyal, and Honorable.

c. Board Type and Decision: In a records review conducted on 08 December 2023, and by a 4-1 vote, the board determined the characterization is inequitable based on the applicant's Personality DO and PTSD diagnosis mitigating the applicant's misconduct of failure to report, disobeying a lawful order, violating an MPO and missing medical appointments. The board determined the remaining medically unmitigated misconduct of adultery, being involved in a

physical alteration and making false official statements is not mitigated because PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. The Board weighed the totality of the applicant's homelessness and vocational rehabilitation to mitigate the remaining misconduct and voted relief was warranted. Accordingly, the board voted to upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The board determined the RE code was proper and equitable and voted not to change it based on the applicant's medical diagnosis.

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:** 7 November 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** The memorandum is undated.

(2) **Basis for Separation:** Pattern of Misconduct

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

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

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

(6) **Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 3 September 2009 / 4 years

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 117

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 68W10 Health Care Specialist / 1 year and 9 months

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

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** NDSM, GWOTSM, ASR

g. **Performance Ratings:** NA

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

(1) On 23 April 2009, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; they enlisted in the Regular Army on 3 September 2009 for 4 years as

a PVT.

(2) The Enlisted Record Brief provides the applicant promoted to PFC on 3 September 2010; on 8 March 2011, they were flagged (Suspend Favorable Personnel Actions (FLAG)) for failing the APFT (JA) and on 10 August 2011, for field-initiated involuntary elimination.

(3) On 24 April 2011, the applicant filed a Military Police Report for a military offense, criminal and complaint, which was marked founded. The applicant and an unknown person were involved in a physical altercation when the applicant was struck in the head with an unknown object. The applicant was transported to BACH E.R. for treatment, where Fort Campbell police were notified of the incident. Contact was made with both the applicant and [redacted] but both refused to provide sworn statements concerning the incident. The applicant further refused medical treatment for their wounds. Alcohol involvement is unknown. This was the final report. PFC [subject of the offense in violation of Article 128, UCMJ, on post] admitted to striking the applicant in a physical altercation. Unknown witnesses of the altercation stated that PFC struck the applicant with a brick when the altercation ended. PFC was further processed and released to their unit. Alcohol involvement is unknown.

(4) SPC provided an undated statement, stating the applicant sent them a text message saying "I'm at the E.R. with my brother.... My brother is having trouble with breathing. I will bring "documentation" to whoever needs it when I leave..." After training, SPC received a phone call from SFC asking whereabouts of the applicant, in which the SPC gave SFC the message, adding that the applicant is a single parent of their brother. SFC advised SPC something had happened to them, SPC called the applicant who informed the SPC they had been attacked and was scared, they were about to take a shower and come to work. SPC advised they were headed to their apartment, take pictures of any injuries, and call the police. When they arrived, the police was there taking a statement. The applicant stated SPC ex-spouse attacked them while they were in their car on the way to get their ID from their friend's house. SPC asked why the applicant was not either at the hospital, at home with their brother or at work, the applicant stated they only left to each chow with a friend and planned to head to work afterwards, stating their brother felt better and they could leave them at the time. The ex-spouse was at another Soldier's house outside yelling something at them and giving the applicant the finger. After noticing they did not have their ID card, they turned around to get it and they saw the ex-spouse move in front of their vehicle and blocked them from continuing down the street; they had to stop the car and that is when they were attacked. The applicant stated they remember seeing a knife and grabbing for the knife and started to fight back to protect themselves. The applicant stated they were able to get the car moving again and they were the only reason the fight had stopped; the applicant states they never left the car during the fight. They went to their friend's house to get their ID and went straight home. SPC and the applicant went to the police station to give the applicant's statement; the applicant was still very upset headed back to the company.

(5) Two Developmental Counseling Forms, provides the applicant was counseled in April and June 2011 for the following: missed physical therapy appointment and failure to report/second offense.

(6) On 15 June 2011, their 1SG issued them a military protective order (MPO) to remain 500 feet away from SPC [redacted], counseling them on the alleged adulterous behavior with SPC while they are still married, picking them up from their home, which is in violation of the first MPO given to them by 1SG on 29 April 2011; they were ordered to have no contact with the SPC or their spouse.

(7) On 30 June 2011, SPC provided a sworn statement that states they have seen SPC [who the MPO orders them to have no contact with] coming in and out of the applicant's house at night and SPC parks their vehicle behind a fence so that no one can see their vehicle. SPC sits on the steps with PFC's brother and smokes while they hang out. I have heard arguments between the two late at night and the last time that I witnessed SPC at the applicant's house was on 17 June 2011, when SPC was walking up to the house asking them if they needed help caring the food in the house, which their spouse and them had just bought from the store. They have also witnessed the two of them riding in the same vehicle; most of the time it is the applicant's car.

(8) Three Developmental Counseling Forms, provide the applicant was counseled in July and August 2011 for the following:

- disobeying a lawful order
- initiating administrative separation
- bar to reenlistment

(9) On 1 August 2011, the applicant accepted nonjudicial punishment (NJP) in violation of Article 90 (disobeying a lawful order to return from leave from their commissioned officer); they elected not to appeal; punishment was imposed, reducing them to PV2, suspended, to be automatically remitted unless sooner vacated on or before 31 January 2011; extra duty for 45 days; and an oral reprimand.

(10) On 10 August 2011, a bar to the applicant's reenlistment was placed in their record for their NJP and the pending NJP; they did not submit a statement and elected to appeal the decision. A Suspend Favorable Personnel Actions (FLAG) was flagged on the applicant's record for field-initiated elimination (BA).

(11) On 10 August 2011, the company commander forwarded a request to the paralegal specialist for the administrative separation process to be initiated and recommended the applicant receives an Honorable discharge upon separation IAW AR 635-200, Chapter 14-12b, Pattern of Misconduct.

(a) On 16 August 2011, a Report of Medical History, provides the applicant has been in counseling since April 2011 at ABH is still taking their Celexa; in effect, they noted lacerations on their forehead since April 2011, as well as a temporal headache nearly every morning for the past few months.

(b) On 18 August 2011, a Report of Medical Assessment, provides the applicant was suffering from worsening headaches that were constant and severe, back problems, foot problems, anemia, and trouble sleeping.

(12) The same day, a Report of Medical Examination provides the applicant was cleared for separation noting a summary of their diagnoses and recommendations related to their feet, shin splints, and muscle spasm which required specialist referrals; The Dr. noted the applicant received BH counseling and is still taking Celexa; they were qualified for service/administrative proceedings.

(13) On 12 September 2011, the applicant received counseling at trial defense service regarding their rights during the Article 15 procedures; they elected to consult with military counsel and requested a copy of their article 15 packet.

(14) On 13 September 2011, the applicant accepted nonjudicial punishment (NJP) in violation of Article 92 (disobeying a lawful order in violation of a military protective order (MPO));

they elected to appeal and submit additional matters; punishment was imposed, reducing them to PVT, suspended for 180 days; forfeiture of \$733 of pay per month for two months, suspended for 180 days; extra duty for 45 days; and an oral reprimand.

(15) The applicant was counseled [on 5 October 2011] for having been in violation of Article 107, UCMJ, for making a false official statement on 4 October 2011; they did not report to their assigned extra duty, as provided on the Staff Duty Log, which states "PFC did not report because they said their 1SG and NCO told them do not show up." 1SG stated they did not excuse the applicant from the duty and recommended them for UCMJ action by the CDR. The applicant selected "disagreed with the information above" and signed and dated the form for 5 September 2011. "For Leader Responsibilities", 1SG noted "ensure the soldier understands the importance of the counseling" and "ensure the supervisor conduct in-depth counseling with the soldier concerning the conduct that led to this notification.

(16) The entire separation package is undated. The intermediate commander notified the applicant of their intent to separate them under provisions of AR 635-200, Chapter 14-12b (2), Pattern of Misconduct, with a recommended characterization of service as General (Under Honorable Conditions).

(a) On 24 October 2011, the applicant acknowledged receipt of their separation notice.

(b) On 26 October 2011, the applicant was counseled on their separation IAW AR 635-200, Chapter 14-12b at trial defense services and was afforded the opportunity to receive legal consultation, however, they waived their right to counsel and elected not to submit a statement on their behalf, and they were ineligible for reenlistment in the Army for 2 years.

(c) The appropriate separation authority approved the discharge and directed the applicant be separated with a characterization of General (Under Honorable Conditions).

(17) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 7 November 2011 with a characterization of service of General (Under Honorable Conditions); they completed 2 years, 2 months, and 5 days of active service. The applicant has not completed the first full term of service.

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

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

(1) Applicant provided:

(a) On 11 August 2011, the applicant provided medical records from Carentan Clinic (La Pointe Health Clinic), which lists their diagnoses, in effect, as Personality Disorder, Adjustment Disorder with disturbance of emotions, conduct, Anxiety, and Depressed Mood. Their active medications listed, in effect, Citalopram Hydrobromide 10Mg and Zolpidem Tartrate 10Mg.

(b) On 15 January 2019, the applicant provides a VA Decision Rating, awarding 50 percent service-connected disability for posttraumatic stress disorder effective 7 September 2017, established from the assault experienced which caused difficulty to connect with the unit or motivated to continue in their work, difficulty sleeping, increased arousal, and hypervigilance. The medical record substantiated the reported incidence of physical assault in April 2011. There was no history of disciplinary or mental health issues noted in their service records prior to this

event. Subsequent records indicated multiple infractions and counseling forms, which resulted in their involuntary discharge for a pattern of misconduct. Medical records beginning in June 2011 and following, listed adjustment disorder and Personality Disorder. They were seen by Behavioral Health in August 2011 for emotional symptoms secondary to problems with their command. Post military records indicated they were treated for PTSD beginning in 2015; they have received services for homeless Veterans and vocational rehabilitation since 2013. Based on this evidence, the examiner opined the currently diagnosed PTSD is at least as likely as not related to the claimed in-service stressor involving personal assault.

(2) AMHRR Listed: On 19 August 2011, a Report of Mental Status Evaluation provides the clearance for administrative separation IAW AR635-200, Chapter 14-12, which notes no obvious impairments, cooperative behavior, normal perception, unlikely to be impulsive, and not dangerous. The Psychiatrist opined the applicant can understand and participate in administrative proceedings, appreciates the difference from right and wrong, and meets medical retention requirements. No diagnoses is listed, and specifically PTSD and TBI were scored as negative.

5. APPLICANT-PROVIDED EVIDENCE: Online DD Form 293 (Application for the Review of Discharge); SF-600 (Medical Health Record) from Carentan Clinic (La Pointe Health Clinic); VA Decision Letter

6. POST SERVICE ACCOMPLISHMENTS: The applicant is treating their PTSD under the care of the VA.

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), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel and the authorized types of characterization of service or description of separation.

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

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

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 1 (General provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation

of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filled in the permanent part of the Soldier's official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14a) or a Pattern of Misconduct (14-12b).

(5) 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. 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. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12b, 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 waivable. Eligibility: Ineligible unless a waiver is granted.

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

g. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

(1) Article 90 (willfully disobeying lawful order of superior commissioned officer) states in subparagraph, the maximum punishment is dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) Article 92 (failure to obey order or regulation) states in subparagraph, the maximum punishment is dishonorable discharge, forfeiture of all pay and allowances, and confinement for 6 months.

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

8. SUMMARY OF FACT(S): 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 Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the RA as a PVT and promoted to PFC, serving as a health care specialist. They served 1 year, 11 months, and 24 days before receiving a bar to reenlistment.

(1) The applicant received multiple counseling forms for minor infractions. In April 2011, the applicant was involved in a physical altercation, in which they sustained injuries and had to be taken to the E.R. for urgent care. They were assaulted with a brick by another Soldier.

(2) The applicant received a military protective order from their commander ordering them to stay away from SPC [redacted] who is still married, for alleged adulterous behavior. the applicant received two NJPs for disobeying a lawful order to return from leave and for wrongfully

being in contact with the spouse of SPC; they were demoted to PVT and separation actions were initiated IAW AR635-200 Chapter 14-12b, Patterns of Misconduct. The applicant waived their right to consult with defense counsel and elected not to submit a statement on their behalf.

(3) The record provides a separation medical/mental status evaluation, which indicates they were seen by BH and on Celexa following their assault, however, they were cleared for separation with a few referrals for their feet, shin splints, and muscle spasms.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

9. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD (note: diagnoses of Adjustment DO with depressed mood and Adjustment DO with mixed disturbance of emotions and conduct are subsumed under the PTSD diagnosis).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection for PTSD establishes it began during 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 BH condition, PTSD, which mitigates some of the misconduct. As there is an association between PTSD and oppositional behavior toward authority figures, there is a nexus between this condition and the applicant's failure to obey a lawful order and violation of a military protective order. As there is an association between PTSD and avoidant behaviors, there is a nexus between her diagnosis of PTSD and failure to report and missing of medical appointments. PTSD does not mitigate the offenses of committing adultery, being involved in a physical altercation, or making false official statement as PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the available evidence did not support a conclusion that the applicant's PTSD and Personality DO outweigh the misconducts of committing adultery, being involved in a physical

altercation, or making false official statement as PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

b. Response to Contention(s): The applicant requests an honorable discharge and a change of reason for their separation. The board considered this contention and voted to grant relief in the form of an upgrade in characterization and change in narrative reason and separation code.

c. The board determined the characterization is inequitable based on the applicant's Personality DO and PTSD diagnosis mitigating the applicant's misconduct of failure to report, disobeying a lawful order, violating an MPO and missing medical appointments. However, the board determined the remaining medically unmitigated misconduct of adultery, being involved in a physical altercation and making false official statements is not mitigated by any of the applicant's behavioral health conditions. The Board weighed the totality of the applicant's homelessness and vocational rehabilitation to mitigate the remaining misconduct and voted relief was warranted. Accordingly, the board voted for an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The board determined the RE code was proper and equitable and voted not to change it based on the applicant's medical diagnosis.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable based on the applicant's PTSD and Personality DO, mitigating the misconduct of failure to report to battle assembly, disobeying a lawful order in violation of a military protective order (MPO), and missing medical appointments. The Board mitigated the remaining misconduct based on the totality of the applicant, compassion, and post service accomplishments of vocational rehabilitation. Thus, the prior characterization is no longer appropriate.

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

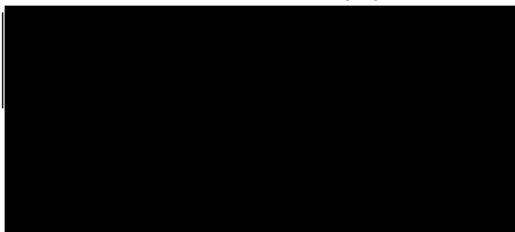
(3) The RE code will not change based on the applicant's medical diagnosis, the Board determined the current code is proper and equitable.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

5/20/2024



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

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

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

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