

1. Applicant's Name:

- a. **Application Date:** 20 February 2023
- b. **Date Received:** 20 March 2023
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is an under other than honorable conditions. The applicant requests an upgrade to honorable and a change of narrative reason for separation to "Secretarial Authority."

(2) The applicant, through counsel, seeks relief stating during their initial request, Army Discharge Review Board Case AR20170019399, dated 19 April 2019, they did not mention, argue, nor provide document documentation of Post-Traumatic Stress Disorder (PTSD). Nor was there any mention of the widespread racial discrimination perceived by minority officers of their unit. This request brings to light the applicant's PTSD and argues that it was not considered during the time of their discharge, as mitigating evidence to their misconduct. During the time of the applicant's misconduct, they were struggling with family and personal problems and PTSD. In addition, there was a widespread perception amongst the command's minority officers of racial discrimination, which was investigated through an Army Regulation 15-6 (Procedures for Investigating Officers and Board of Officers) investigation.

(3) The applicant was dealing with PTSD and anxiety during the time of their misconduct and later depression due to how their command was handling their lapse of judgment. Their PTSD started around 2008, due to finding a roommate who had committed suicide. This experience caused them to have intrusive distressing memories regularly. The combination of family and personal problems struggles with PTSD, anxiety, and depression and racial discrimination had a negative impact on their capability to serve.

(4) The Hagel, Carson, and Kurta Memorandums lay out additional rules when reviewing an application for a discharge upgrade. Prior to the time of discharge, and at discharge the applicant has struggled with his mental health, in particular, PTSD. At their discharge, they were not yet officially diagnosed with PTSD, even though it started manifesting back in 2008. The PTSD was not factored in when considering their original characterization of service. Furthermore, there is no indication that it was presented as mitigating evidence at any of their disciplinary proceedings. Had their PTSD been factored in, their discharge should have been honorable.

b. Board Type and Decision: In a records review conducted on 10 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / Army Regulation 600-8-24, Paragraph 3-13 / DFS [Good of the Service, Conduct Triable by Court-Martial] / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 11 March 2015

c. Separation Facts:

(1) Dates and Charges Preferred (DD Form 458, Charge Sheet): 24 September 2014 the applicant was charged with –

(a) Charge I – Violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ), with Specification – on or about 24 June 2014, without authority, absent themselves from their unit and did remain so absent until on or about 30 June 2014.

(b) Charge II – Violation of Article 92 (Failure to Obey an Order or Regulation), UCMJ, with two Specifications of violating a lawful general order, to wit: Army in Europe Regulation 600-1, paragraph 5(b), by operating a motor vehicle with a suspended license on or about 16 October 2013 and on or about 8 November 2013.

(c) Charge III – Violation of Article 107 (False Official Statements), UCMJ for four Specifications, with intent to deceive, signed an official document, to wit: DA Form 31, block 13 and block 14, which record was false in that they were not the departure authority nor the approval authority, and was then known by the applicant to be so false.

(d) Charge IV – Violation of Article 123 (Forgery), UCMJ, with two Specifications – with intent to defraud, falsely make the signature of the approving authority to a DA Form 31, which said DA Form 31 would, if genuine, apparently operate to the legal harm to another and which was used to the legal harm of the United States Government, in that it was used to circumvent the Space Available Travel procedures, on or about 2 April 2014 and between on or about 13 June 2014 and on or about 24 June 2014.

(e) Charge V – Violation of Article 133 (Conduct Unbecoming an Officer and a Gentleman), UCMJ, with two Specifications, did, at or near Ramstein, Germany, on or about 13 June 2024, wrongfully and dishonorably place their name on the Space Available Travel wait list, despite being flagged from taking leave,; and on or about 24 June 2014, wrongfully utilize the findings of an Army Regulation 15-6 investigation into forged leave form from April 2014 to wrongfully circumvent Space Available Travel procedures.

(2) Legal Consultation Date: 8 October 2014

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 600-8-24, paragraph 3-13, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 9 February 2015 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Service:** NIF
- b. **Age at Entry of Active Duty / Education / GT Score:** 23 / bachelor's degree / NA
- c. **Highest Grade Achieved / MOS / Total Service:** O-2 / 11A5P, Infantry / 3 years, 11 months, 5 days.
- d. **Prior Service / Characterizations:** ARNG, 29 September 2008 – 12 September 2010, HD
AD, 13 September 2010 – 6 April 2011, NIF
- e. **Overseas Service / Combat Service:** Germany / NA
- f. **Awards and Decorations:** AAM, NDSM, GWTSM, GWTSM, ASR, OSR
- g. **Performance Ratings:** 13 September 2010 – 25 March 2014 / Center of Mass
26 March 2014 – 6 May 2014 / Not Qualified
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: General Court-Martial Convening Authority (GCMCA) Memorandum of Reprimand (GOMOR), dated 3 June 2013, reflects the commanding general reprimanded the applicant in writing for conduct unbecoming an officer and for knowingly allowing their spouse to operate their vehicle without a U.S. Army Europe (USAREUR) license. The commanding general states –

(a) It has been reported to them that the applicant's USAREUR license was suspended for 60 days after being cited by German authorities for driving 65 kilometers per hour over the speed limit on 6 November 2012. Additionally, it had been reported to them that the applicant was late to multiple unit formations between 19 April 2012 and 6 May 2013, and violated information assurance policies by plugging their cellular phone into their government computer on 24 April 2013. Finally, it appears the applicant permitted their spouse to drive their USAREUR-plated vehicle without a license on multiple occasions.

(b) The applicant's disregard for the military rules and regulations and their failure to ensure their command-sponsored dependent complies with the rules and regulations that apply to time demonstrates a gross lack of maturity and professionalism.

(2) A memorandum, 2nd Cavalry Regiment, subject: Army Regulation 15-6 Investigation Findings and Recommendations – in the Matter of Captain J____ C____, dated 20 May 2013, reflects the Investigating Officer found by the preponderance of the evidence that minority officers perceive a pattern of racial discrimination within the Regiment. The Investigating Officer specifically states the applicant was removed within a few months as a platoon leader; however, their removal was justifiable and well documented by counseling statement.

(3) In the applicant rebuttal memorandum dated 24 June 2013, they requested the GOMOR not be filed at all or filed in their local file. They truly regret that their character has come into question and apologize. They realize that as a sponsor they are ultimately responsible for their dependents and their actions. Even though they did not know their spouse was operating a vehicle without a license, they want to apologize for not making sure their

spouse was communicating with them properly. The applicant states the circumstances surrounding their excessive speed citation from 6 November 2012 and their counseling statements for being late for formations. They still believe they can successfully contribute to the mission of the Army and request to let them learn from their mistake and regain the confidence of their command.

(4) A Command Recommendations – Reprimand Filing form, dated 8 July 2013, reflects the applicant's company commander recommended the GOMOR be filed in the applicant's Army Military Human Resource Record (AMHRR) and commented "[Applicant] has repeatedly failed to uphold simple standards that we expect the most junior Soldiers to be able to meet. After reviewing their rebuttal statement, I still have serious questions about their decision making ability. Soldiers deserve leaders that can set the right example on and off duty." The applicant's battalion commander recommended the GOMOR be filed locally and commented "No criminalistic intent. Soldier can be reprimanded via continued corrective action and subsequent OER [Officer Evaluation Report]. [Note: the commanding general's filing determination is not in evidence for review.]

(5) A memorandum, Headquarters, 1st Squadron, 2nd Cavalry Regiment, subject: Appointment as Investigating Officer (IO) Pursuant to Army Regulation 15-6, dated 6 April 2014, reflects an IO was appointed to conduct an informal investigation into the facts and circumstances of an incident involving the attempted travel of the applicant and their two dependents, on an Air Mobility Command flight departing from Ramstein Air Base on 3 April 2014. The investigation will establish the facts and circumstances of the incident in question, and specifically the following –

(a) Determine whether the applicant's commander had validly signed the applicant's DA Form 31 (Request and Authority for Leave), dated 31 March 2014, requesting 30 days of emergency leave. If not, determine whether the applicant had otherwise been authorized to take 30 days of emergency leave from 1 April 2014 to 30 April 2014.

(b) Establish whether the applicant was appropriately utilizing the Space Available Travel Program, for them and their two dependents on the flight in question.

(c) Outline, whether, in the course of conducting this investigation, the discovery of any potential misconduct arising out of the incident not referenced above.

(6) A Headquarters, 1st Squadron, 2nd Cavalry Regiment, subject: Army Regulation 15-6 Findings and Recommendations, dated 11 April 2014, reflects the IO has investigated the circumstances surrounding an incident involving the attempted travel of the applicant and their two dependents, on an Air Mobility Command flight departing from Ramstein Air Base on 3 April 2014.

(a) The IO states they found sufficient evidence to determine the applicant's emergency leave form was invalid, the applicant was not authorized to take 30 days of emergency leave, and the applicant was attempting to improperly use Space Available Travel Program. The applicant's former commander states the applicant did not request leave during the period in question and the approval signature on the applicant's leave form is not theirs (former commander). According to the Squadron Administration Clerk, there is no record of a request for leave for the applicant. The applicant's action to be removed from the flight indicated they never planned to complete the travel but intended only to use the emergency leave excuse to get higher priority for their family in the Space Available Travel Program.

(b) The IO states they believe this action is of sufficient seriousness to pursue with further action to include adverse action.

(7) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: Legal Review of Army Regulation 15-6 Investigation in Regarding [Applicant], dated 11 April 2014, reflects the Administrative Law Attorney, having reviewed the investigation, in regard to the incident involving the attempted travel of the applicant and their two dependents on 3 April 2014, finds the investigation legally sufficient. A preponderance of the evidence supports the findings that the applicant had not been authorized to take 30 days of emergency leave and that their DA Form 31 dated 31 March 2014, had not been validly signed; and the applicant was not appropriately utilizing the Space-A Travel program.

(8) A DA Form 67-10-1 (Company Grade Plate Officer Evaluation Report) covering the period 26 March 2014 through 6 May 2014, reflects in –

- Part 1i (Reason for Submission) – Relief for Cause
- Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes) – the applicant's rater marked "Unsatisfactory" and commented "relief for Cause OER Directed by the Senior Rater."
- Part IVc (1) (Character) – the applicant's rater commented "[Applicant] lacks the discipline required to be an effective leader which lowers the expectations of [applicant's] subordinates and demonstrates an inability to lead by example."
- Part IVc (2) (Presence) – the applicant's rater commented "[Applicant's] inability to maintain professionalism and lack of integrity in [applicant's] off duty hours, does not support the Army Values and expectations of the Officer Corps."
- Part IVc (3) (Intellect) – the applicant's rater commented "[Applicant] lacks sound judgement in [applicant's] personal affairs which leads to conflicts with [applicant's] ability to lead other."
- Part IVc (4) (Leads) – the applicant's rater commented "[Applicant's] leadership skills are junior to that of [applicant's] peers."
- Part IVc (5) (Develops) – the applicant's rater commented "[Applicant] falls short of growing and learning from previous mistakes and fails to take ownership thereof."
- Part VI (Senior Rater) – the applicant's senior rater rated the applicant's potential as "Not Qualified" and commented.
 - "I directed the relief for case of [Applicant] for personal misconduct.
 - [Applicant] lacks the potential for continued service as a commissioned officer.
 - [Applicant] demonstrated poor judgement and dishonesty which illustrates [applicant's] in ability to lead.
 - [Applicant] has recently shown improvement in [applicant's] on-duty performance, but [applicant's] in ability to follow regulation and policies in [applicant's] personal life overshadow [applicant's] progress.

(9) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: GOMOR, dated 6 May 2014, reflects the applicant was reprimanded in writing for submitting a false and fraudulent leave form to Air Force authorities, forging the signature of a superior commissioned officer, and engaging in conduct unbecoming an officer. The commanding general states –

(a) It has been reported to them that on or about 3 April 2014, the applicant engaged in a course of conduct designed to manipulate and improperly use the Space Available

travel program. They attempted to send their two dependents to the United States on an Air Mobility Command flight at a higher priority than authorized. In order to manifest their dependents onto the flight, the applicant provided an emergency leave form that included a forged signature, lacked a control number, claimed 30 days of authorized leave, and represented the applicant and their dependents would travel together. Then, after checking in, the applicant left the gate area, telling the Air Force personnel that they had to go pick up a Soldier in Frankfurt, but asking them to keep their family members on the flight. Believing their two dependents would still be able to fly without them, they nevertheless had the audacity to seek and accept a full refund of the \$105.00 they paid for them and their dependents to fly, and then departed the terminal. Eventually, Air Force personnel realized the applicant's family members no longer had priority and removed them from the aircraft.

(b) The applicant's command's lack of knowledge of their leave form or plans to travel indicate the applicant either never planned to board the flight and their actions were deliberate, or they intended to absent themselves from their unit without authorization. Their manipulation of Space Available system resulted in the delay of a flight filled with hundreds of Soldiers and dependents and brought disgrace upon the applicant and their unit. In light of the applicant's demonstrated lack of integrity, poor judgment, and their disregard for authority, question the applicant potential for continued military service.

(10) In the applicant's rebuttal memorandum dated 12 May 2014, the applicant requested for the GOMOR be not filed in their AMHRR or local file. They have reviewed the Army Regulation 15-6 investigation and has have time to reflect on their behavior. They truly regret that their character has come into question and that their leadership has lost trust in them. For their errors they sincerely apologize. They turned in their leave form and later found the leave form on their desked and signed. They would never sign for their commander, especially when they could have gone in their office and ask for their signature. They would like to again apologize for attempting to get their family back to the United States without the correct documents.

(11) A Command Recommendations – Reprimand Filing form, dated 21 May 2014, reflects the applicant's company commander recommended the GOMOR be filed in the applicant's AMHRR and commented "[Applicant] has consistently demonstrated a pattern of poor decision making, and does not possess the maturity and personal responsibility required of a Commissioned Officer. [Applicant] has a previous locally filed GOMOR for traffic violations, driving a suspended license, and vehicle registration issues. AMHRR filing is appropriate given [applicant's] performance pattern." The applicant's battalion commander recommended the GOMOR be filed in the applicant's AMHRR on commented "Continued poor decision making from an officer who does not live the Army Values. The Officer Corps demands more."

(12) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: Filing Determination on Reprimand, dated 30 May 2014, the commanding general, having carefully considered the GOMOR, the circumstances of the misconduct, and all matters submitted by the applicant in defense, along with the subordinate commander recommendations, directed the GOMOR be placed permanently in the applicant's AMHRR.

(13) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: Initiation of Elimination, dated 5 June 2014, reflects the commanding general notifying the applicant that they are required to show cause for retention on active duty under the provisions of Army Regulation 600-8-24, paragraph 4-2a(8), failure to conform to prescribed standards of military deportment; paragraph 4-2b(5), acts of personal misconduct; paragraph 4-2b(8), conduct unbecoming an officer; and paragraph 4-2c, derogatory information. The commanding general's action is based on the following specific reasons for elimination –

(a) On 19 July 2013, a GOMOR the applicant received for having their USAREUR license suspended for traffic violations, multiple failure to report, and allowing a non-licensed person to drive their vehicle, was filed in their local personnel file.

(b) On 30 May 2014, a GOMOR the applicant received for improperly manipulating Space Availability travel was directed to be filed in their AMHRR.

(14) A DD Form 458 (Charge Sheet) dated 24 September 2014, reflects charges referred against the applicant for, as described in previous paragraph 3c (1).

(15) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: Notification of Article 32(b) in the Case of United States v. [Applicant], dated 2 October 2014, reflects the applicant's notification that on 6 October 2014, the Office of the Staff Judge Advocate will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning the charges preferred against them.

(16) In the applicant's memorandum, subject: Resignation for the Good of the Service (In Lieu of General Court-Martial), dated 8 October 2014, the applicant voluntarily tender their resignation from the Army for the good of the service under the provision of Army Regulation 600-8-24, paragraph 3-13. They do not desire to appear before a court-martial, they have not been subject to coercion with respect to this resignation, have been advised of, and fully understand the implication of this action. The applicant states –

(a) They have been advised that prior to submitting this resignation they may, at their option consult with and be represented by legally qualified counsel. They have been fully advised and counseled in this matter by U.S. Trial Defense Service, Europe at Rose Barracks, Germany.

(b) They understood this resignation, if accepted, may be considered as being Under Other Than Honorable Conditions and regardless of the type of discharge certificate furnished, they understand they will not receive separation pay and they will be barred from all right, based on the period of service from which they will be separated, under any laws administered by the Department of Veterans Affairs (VA).

(c) They have been afforded an opportunity to present matters in extenuation, mitigation, or defense of their case and such matters are attached. In their personal statement, they state they sincerely apologize for their actions and asks for clemency and respectfully request their resignation be approved in lieu of general court-martial. They ask however, that they be given a characterization of no less favorable than General (Under Honorable Conditions). Please consider their personal background, extenuating matters involving the death of four family members around the time of the alleged offenses, and their past contributions to the U.S. Army. During the last 6 months the have been completely overwhelmed and stressed. Facing a court-martial and being ineligible for educational benefits would make it extremely difficult for them and their family to move forward in finding employment or seeking higher education.

(17) A memorandum, 7th U.S. Army Joint Multinational Training Command, subject: Resignation for the Good of the Service: [Applicant], dated 9 October 2014, the commanding general, reviewed the applicant's resignation for the good of the Service, with matters submitted by the applicant, the Court-Martial charges preferred against them, the initiation of elimination, as well as all evidentiary matters. The commanding general recommended the applicant's resignation for the good of the Service be approved and that their characterization of service be Under Other Than Honorable Conditions.

(18) A memorandum, U.S. Army Human Resources Command (HRC), subject: Resignation for the Good of the Service in Lieu of General Court-Martial, dated 5 December 2014, reflects the applicant's resignation for the good of the Service in lieu of a general court-martial request forwarded to the Deputy Assistant Secretary of the Army (Review Boards) for approval. HRC stated the General Court-Martial Convening Authority recommends the applicant's Resignation for the Good of the Service in Lieu of General Court-Martial be approved, and they be discharged with an Under Other Than Honorable Conditions characterization of service.

(19) On 9 February 2015 the Deputy Assistant Secretary of the Army (Review Boards) accepted the applicant's resignation and directed they be discharged from the U.S. Army with an Under Other Than Honorable Conditions characterization of service.

(20) On 11 March 2015 the applicant was discharged accordingly. Their DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects in –

- item 12c (Net Active Service This Period) – 3 years, 11 months, 5 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – DFS [In Lieu of Trial by Court-Martial]
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

(21) A DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), dated 21 September 2018, reflects the applicant request to upgrade their characterization of service to honorable and to change their narrative reason for separation to "Secretarial Authority."

(22) On 19 April 2019 the Army Discharge Review Board, in a records review, denied the applicant's requests upon finding the separation was both proper and equitable. The Board determined –

(a) There is no evidence in the record, nor has the applicant produced any evidence to support the contention that their command failed to properly assess the evidence supporting the awarding of the GOMORs in question.

(b) The record does not contain any indication or evident of arbitrary or capricious actions by the command and all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process. The character of the applicant's discharge is commensurate with their overall service record.

(c) The discharge was consistent with the procedural and substantive requirement of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(23) The VA Primary Care Admission Evaluation Note, dated 10 February 2022, reflects a diagnosis of PTSD, Unspecified Depressive Disorder; and Unspecified Anxiety during a 30 minute phone assessment.

(a) The History of Presenting Problem: states the applicant endorsed long-standing depression/anxiety and PTS [Post-Traumatic Stress] symptoms impacting their functioning. Noted experiencing anxiety PTS symptoms since 2008 and depression just before getting out of the Army in 2015. Applicants share they continued to be angry with circumstances of their discharge and believes that the Army had impacted their ability to move forward.

(b) The Traumatic Event – 2008 while on active duty, roommate committed suicide by use belt and the applicant and the roommate's girlfriend found them.

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

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

(1) **Applicant provided:** VA Primary Care Admission Evaluation Note, 10 February 2022, reflecting the applicant's diagnosis of PTSD, Unspecified Depressive Disorder; and Unspecified Anxiety Disorder.

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted in support of their petition.

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Brief in Support of Application for Discharge Upgrade, with Exhibits
 - Exhibit A - VA Primary Care Admission Evaluation Note, dated approximately 7 years after the applicant's discharge from the U.S. Army
 - Exhibit B – A memorandum, 2nd Cavalry Regiment, subject: Army Regulation 15-6 Investigation Findings and Recommendations – in the Matter of Captain J____ C____, reflecting perceived racial discrimination of minority officers.
 - Exhibit C – 3rd Party Statement from applicant's spouse
 - Exhibit D – Red Cross Message
 - Exhibit E – six 3rd Party Statements
 - Exhibit F – excerpts from applicant's Military Record

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

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

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

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

Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

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

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

c. 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 600-8-24 (Officer Transfers and Discharge), 12 May 2006, prescribed the officer transfers from active duty to the Reserve Component and discharge function for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

(1) Honorable characterization of service, an officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

(2) General Under Honorable Conditions characterization of service, an officer will normally receive a General Under Honorable Conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an Honorable discharge. A separation under honorable conditions will normally be appropriate when an officer, to include submits an unqualified resignation or a request for release from active duty under circumstances involving misconduct.

(3) Under Other Than Honorable Conditions characterization of service is an administrative separation from the service under conditions other than honorable. An officer will normally receive an "Under Other Than Honorable Conditions" when they resign for the good of the service; are dropped from the rolls of the Army; are voluntarily separated due to misconduct, moral or professional dereliction, or the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed; or are discharged following conviction by civilian authorities.

(4) Paragraph 1-24 (Referral for Physical Disability Evaluation) stated if a commissioned officer is being processed for release from active duty, separation, or retirement or has been referred for elimination action, when it is determined that the officer has a medical impairment that does not meet medical retention standards, the officer will be processed as, to include –

(a) A commissioned officer under investigation or an offense chargeable under UCMJ that could result in dismissal or punitive discharge may not be referred for or continue disability processing.

(b) When a commissioned officer is being processed for, to include resignation for the good of the service; referral for elimination, or request for elimination, resignation, or retirement in lieu of elimination; the officer will be processed in accordance with the provisions of this regulation and through the Medical Evaluation Board/Physical Evaluation Board system. If the result of the physical disability evaluation is a finding of physical fitness, the Army Physical Disability Agency will approve the findings for the Secretary of the Army and forward the proceedings to the commander, Human Resources Command (HRC), to be processed. If a physical disability evaluation results in a finding of physical unfitness, both actions will be forwarded by HRC, to the Secretary of the Army or their designee for determination of appropriate disposition.

(6) Chapter 3 (Resignations) prescribed the tasks, rules, and steps for processing voluntary resignation. Any officer of the Active Army or U.S. Army Reserve may tender a resignation under provisions of this chapter. The Secretary of the Army or their designee may accept resignations and orders will be issued by direction of HRC.

(7) Paragraph 3-13 (Rules for Processing Resignation for the Good of the Service In Lieu of General Court-Martial) stated an officer may submit a resignation for the good of the Service in lieu of general court-martial under the following circumstances: court-martial charges have been preferred against the officer with a view toward trial by general court-martial; or the officer is under a suspended sentence of dismissal. An officer under court-martial charges will be retained on active duty until final disposition of the charges or until the officer's request for resignation is approved. The commander will ensure that the officer's request for resignation is voluntary and that the applicants are provided the opportunity to consult with legal qualified counsel. The request for resignation along with the officer's Official Military Personnel File and Officer Record Brief without recommendation will be forwarded by HRC to the Deputy Assistant Secretary of the Army – Review Boards. An officer separated under this paragraph normally receives characterization of service of Under Other Than Honorable Conditions. An officer who resigns for the good of the Service (regardless of the character of service received) is barred

from rights under laws administrated by the Department of Veterans Affairs based on the period of service from which the officer resigned.

(8) Chapter 4 (Eliminations) stated an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have place in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated. Paragraph 4-2 (Reason for Elimination) stated while not all inclusive, when one of the following or similar conditions exist, elimination action may be or will be initiated as indicated, to include failure to conform to prescribed standards of dress, personal appearance, or military deportment; acts of personal misconduct; conduct unbecoming an officer; and derogatory information, such as a relief for cause Officer Evaluation Report or adverse information filed in the AMHRR.

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 "DFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 600-8-24, paragraph 3-13, In Lieu of Trial by Court-Martial.

f. Manual for Courts-Martial (2012 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following, Article 86 (Absence Without Leave), Article 92 (Failure to Obey an Order or Regulation), Article 107 (False Official Statements), Article 123 (Forgery), and Article 133 (Conduct Unbecoming an Officer and a Gentleman).

8. SUMMARY OF FACT(S):

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 600-8-24, paragraph 3-13, in lieu of trial by court-martial. In this request, an understanding a under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 3 years, 11 months, and 5 days of net active service this period and completed their first full term of service.

d. Army Regulation 600-8-24, paragraph 3-13 states a voluntary discharge request in-lieu of trial by court-martial, a discharge under other than honorable conditions normally is appropriate.

e. The applicant's AMHRR contains no documentation of a diagnosis of PTSD or other mental health conditions during the applicant's term of service nor did the applicant provide documentation of any diagnoses during their service. Likewise, the applicant did not provide any evidence of a mental health diagnosis during their previous ADRB case, AR20170019399, dated 19 April 2019, nor did the applicant contend the perception of racial discrimination among minority officers within their unit.

f. 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: Unspecified Anxiety DO; Unspecified Depressive DO. [Note-Adjustment DO with anxiety is subsumed under Unspecified Anxiety DO.].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA medical records document that VA medical records indicate onset of both the Unspecified Anxiety DO and Unspecified Depressive DO occur 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 two of the applicant's BH conditions mitigate some of his misconduct, Unspecified Anxiety DO and Unspecified Depressive DO. [Note-PTSD condition existed prior to service.] As there is an association between Unspecified Anxiety DO, Unspecified Depressive DO and avoidant behavior, there is a nexus between these conditions and the applicant's period of AWOL. Applicant's remaining offenses (falsely signing DA Form 31 four times; wrongfully placing his name on the Space Available wait list despite being flagged from taking leave; falsely signing as the approval authority on DA Form 31; forging a leave form to circumvent Space A travel procedures and driving without a license in Germany on two occasions) are not mitigated by his BH conditions of Unspecified Anxiety DO and Unspecified Depressive DO given that none of these conditions affects 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.** Despite the board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, and determined that while the applicant's Unspecified Anxiety DO, Unspecified Depressive DO and PTSD mitigated the applicant's misconduct (AWOL) the applicant behavioral health diagnosis does not outweigh the applicant's medically unmitigated offenses (falsely signing DA Form 31 four times; wrongfully placing his name on the Space Available wait list despite being flagged from taking leave; falsely signing as the approval authority on DA Form 31; forging a leave form to circumvent Space A travel procedures and driving without a license in Germany on two occasions) considered by the Separation Authority considered IAW AR 600-8-24, Paragraph 3-13, in lieu of trial by court-martial.

b. Response to Contention(s):

(1) The applicant contends stating their PTSD was not considered during the time of their discharge, as mitigating evidence to their misconduct. The board liberally considered applicant's PTSD but found the PTSD did not mitigate falsely signing DA Form 31 four times; wrongfully placing his name on the Space Available wait list despite being flagged from taking leave; falsely signing as the approval authority on DA Form 31; forging a leave form to circumvent Space A travel procedures and driving without a license in Germany on two occasions; and these offenses outweighed the applicant's PTSD and other behavioral health diagnoses.

(2) The applicant contends there was a widespread perception amongst the command's minority officers of racial discrimination, which was investigated through an Army Regulation 15-6 investigation. The board considered this contention and the applicant's assertion of inequity, however the board determined that there is no evidence of said inequity in official records, and the applicant did not provide supporting documentation to overcome the presumption of regularity in the applicant's previous command.

c. The board determined that the discharge is, at this time, proper and equitable considering the current evidence of record. However, the applicant may request a personal appearance hearing to address issues before a 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 voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the board, the applicant's Adjustment DO with anxiety, PTSD, Unspecified Depressive DO and Unspecified Anxiety diagnoses did not mitigate the offenses of falsely signing DA Form 31 four times; wrongfully placing his name on the Space Available wait list despite being flagged from taking leave; falsely signing as the approval authority on DA Form 31; forging a leave form to circumvent Space A travel procedures and driving without a license in Germany on two occasions. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No**
- b. Change Characterization to: No Change**
- c. Change Authority to: No Change**

Authenticating Official:

5/3/2024

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