

1. Applicant's Name: [REDACTED]**a. Application Date:** 17 March 2023**b. Date Received:** 23 March 2023**c. Counsel:** [REDACTED]**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 their narrative reason for separation to "Secretarial Authority."

(2) The applicant, through counsel, seeks relief stating they served honorably for over 15 years without a single act of indiscretion before their misconduct, they were an outstanding member and valuable asset of the U.S. Army with unlimited potential. While they were serving in the U.S. Army they had a series of health-related incidents both mental and physical that led to their status of Absence Without Leave (AWOL), substance abuse, and eventual discharge. Had they been given the opportunity to correct the situation, they would have.

(3) The applicant's discharge and narrative reason for discharge were inequitable. It is unjust to continue to be characterized and punish them for this discharge. They have admitted their mistakes and have fulfilled the terms of the nonjudicial punishment. Since their discharge, they have developed as a model citizen, they have no criminal record, no involvement in drugs since May 2020, no type of alcohol abuse, or any 'run-ins' with law enforcement since their discharge. An upgrade of their discharge would greatly improve their quality of life as they would have access to Department of Veterans Affairs (VA) medical and education benefits.

(4) The applicant states their military experience from when they joined the Army in 2003, their service in Korea, three deployments to Iraq and one to Kuwait, assignment as a recruiter, their mental health incidents, their acts of misconduct, and their life after being discharged from the U.S. Army. They have goals to advance and exceed at their job but can't because of their undesirable discharge. They wish to be counted among the U.S. Army's honorably discharged members, which they consider to be an enormous part of their life. However, the applicant was not given a reasonable opportunity to mitigate or correct their behavior; instead, they were administratively separated. They respectfully request the Board review their application and grant them an upgrade of their discharge to Honorable and an upgrade of their narrative reason to "Secretarial Authority."

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 5 March 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), length and quality of service, to include combat service, and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / Army Regulation 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 6 August 2018

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): on 22 May 2018 the applicant was charged with –

(a) Charge I – Violation of Article 85 (Desertion), Uniform Code of Military Justice (UCMJ), on or about 8 February 2018, without authority and with intent to remain away therefrom permanently, absent themselves from their unit, to wit: El Paso Recruiting Company, located at El Paso, TX, and did remain so absent in desertion until they were apprehended on or about 17 May 2018.

(b) Charge II – Violation of Article 86 (Absence Without Leave), UCMJ, for four Specifications, of without authority, absent themselves from their unit, to wit: El Paso Recruiting Company, and did so remain absent on four occurrences between on or about 4 January 2017 through 13 January 2018.

(c) Charge III – Violation of Article 90 (Disobeying a Superior Officer), UCMJ for two Specifications for, having received a lawful command from their superior commissioned officer, then known by the accused to be their superior commissioned officer, to provide a urine sample for drug testing, and then, to get back to the station, did, willfully disobeyed the same, on or about 11 January 2018

(2) Legal Consultation Date: 6 July 2018

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: Undated / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 January 2014 / Indefinite

b. Age at Enlistment / Education / GT Score: 33 / 60 Semester Hours or More College Credit / 115

c. Highest Grade Achieved / MOS / Total Service: E-7 / 79R4O, Recruiter / 15 years, 2 Months, 6 days.

d. Prior Service / Characterizations: AD, 19 August 1999 – 15 September 1999 / UNC

e. Overseas Service / Combat Service: Korea, SWA / Iraq (19 January 2005 – 10 January 2006, 11 May 2007 – 11 July 2008, and 8 July 2011 – 31 December 2011), Kuwait (1 January 2012 – 30 June 2012)

f. Awards and Decorations: MSM, ARCOM-4, AAM-2, MUC-4, VUA, ASUA, AGCM-4, NDSM, GWTEM, KDSM, ICM-4, NCOPDR-3 / ASR, OSR-4

g. Performance Ratings: 1 September 2005 – 10 November 2013 / Among The Best
11 November 2013 – 10 June 2014 / Fully Capable
11 June 2014 – 10 June 2015 / Among The Best
11 June 2015 – 31 December 2015 – Among The Best
1 January 2016 – 28 November 2016 – Highly Qualified
29 November 2016 – 28 November 2017 – Not Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 13 October 2016 the applicant was awarded the Meritorious Service Medal for exceptional meritorious service and outstanding performance while serving as the Senior Field Artillery Targeting Noncommissioned Officer (NCO), for the period 18 July 2014 to 10 November 2016.

(2) Two DA Forms 4187 (Personnel Action) dated 24 January 2017, reflects the applicant was absent without leave from 4 January 2017 to 6 January 2017.

(3) A DA Form 2627 (Record of Proceedings under Article 15, UMCJ) dated 12 February 2017, reflects the applicant received nonjudicial punishment, in that they, did, at or near El Paso, TX, on or about 5 January 2017, without authority, absent themselves from their place of duty at which they were required to be, to wit: El Paso Recruiting Station, located in El Paso, TX, and did remain so absent until on or about 6 January 2017. Their punishment consisted of a written reprimand. The applicant elected not to appeal.

(4) Three DA Forms 4187 dated 21 April 2017 and 25 April 2017, reflects the applicant was absent without leave from on or about 18 April 2017 to on or about 24 April 2017.

(5) A memorandum, U.S. Army Recruiting Company, El Paso, TX, subject: [Applicant] AWOL incident, dated 29 July 2017, the applicant's commander states, on 20 April 2017, the applicant was reported AWOL. On 24 April 2017 the applicant checked themselves into the Beaumont Behavioral Health Ward. On 31 July 2017, they will be released from the hospital after 3 months of hospitalization.

(6) The Behavioral Health Discharge Summary dated 31 July 2017, reflects the applicant admitted with history of Major Depressive Disorder (MDD), Post-Traumatic Stress Disorder (PTSD) and Alcohol Use Disorder for continued evaluation and treatment. The psychiatrist states the applicant has been inpatient since 24 April 2017. Once they were stabilized for their MDD and PTSD, they were sent to Residential Treatment Facilities (RTF), and they only received treatment for their Alcohol Use Disorder. The applicant was transferred by the RTF to El Paso Behavioral Health for PTSD. They were fearful of the criminal gang element that they had to be exposed to on breaks and in the dining facility where the stated most of the violence takes place. They felt like their anxiety and hypervigilance was much worse and requested to be sent back to the RTF where they had no difficulties in the milieu previously or they threatened to elope. The psychiatrist lists the applicant's diagnoses as PTSD, chronic; MDD, severe with psychotic features; and Alcohol Use Disorder.

(7) A DA Form 2166-9-2 (NCO Evaluation Report) covering the period 29 November 2016 through 28 November 2017, reflects in –

- Part 1i (Reason for Submission) – Relief for Cause
- Part II (Authentication) – the applicant's rater and senior rater signed the form on 26 February 2018, and the applicant refused sign
- Part IVc (Character) – the applicant's rater marked "Did Not Meet Standard" and commented "demonstrated a serious lack of integrity and poor judgment without consideration of results"
- Part IVd (Presence) – the applicant's rater marked "Did Not Meet Standard" and commented "was disciplined for moral and [applicant] off-duty actions made [applicant] unfit for duty"
- Part IVe (Intellect) – the applicant's rater marked "Did Not Meet Standard" and commented "did not use critical thinking to reach solutions that were both effective and efficient to accomplish the center's mission"
- Part IVf (Leads) – the applicant's rater marked "Did Not Meet Standard" and commented "was ineffective and provided no useful guidance"
- Part IVg (Develops) – the applicant's rater marked "Did Not Meet Standard" and commented "failed to use time wisely, consistently failed to meet administrative suspense; constantly late to [applicant's] doctor appointment"
- Part IVh (Achieves) – the applicant's rater marked "Did Not Meet Standard" and commented "failed to comply with instructions of superiors on several occasions"
- Rater Overall Performance – the applicant's rater marked "Did Not Meet Standard" and commented "[Applicant] has been notified of the reason for the relief" and "does not comply with regulation and is a threat to the safety of this unit, recommend discharge at earliest opportunity"
- Part V (Senior Rater Overall Potential) – their senior rater marked "Not Qualified" and commented
 - "I am directing this relief for cause due to the Soldier's inability to perform [applicant's] assigned duties and [applicant's] continued misconduct"
 - "[Applicant] does not possess the potential for continued service in the United States Army in any position, do not send to school and do not promote, NCO refuses to sign, rated NCO unavailable for signature"

(8) A VA Psychology Report dated 7 December 2017, reflects the applicant was referred for an initial Traumatic Brain Injury (TBI) residuals Compensation & Pension examination scheduled for 22 November 2017, through the IDES program. This examination will include an interview and psychological testing may be used. The examiner noted the applicant's service treatment records indicate onset of PTSD-related symptoms in 2006 following the applicant's return from their first deployment. The applicant had an outburst leaving work in 2017 which prompted hospitalization from April 2017 through July 2017. They participated in a dual diagnosis treatment program for PTSD and substance abuse, 23 August 2017 through 21 September 2017. The applicant was referred to the substance use disorder clinic during April 2017, and continues in treatment for both PTSD and substance use disorders. [Note: the applicant's Army Military Human Resource Record (AMHRR) is void of medical and behavioral health documents and documents related to their entry into the IDES process.]

(9) A memorandum, El Paso Recruiting Company, subject: Document Interaction with [Applicant] on 10 January 2018, dated 11 January 2018, the applicant's company commander states, on 10 January 2018, they attempted to counsel the applicant. During the counseling the applicant was informed they were AWOL for a third time, and they would be doing a probable cause urinalysis. The applicant without authority, departed the station. The company

commander chased after them and ordered them to get back in the station, the applicant then got in their privately owned vehicle and drove away.

(10) Four DA Forms 4187, dated 8 January 2018 through 18 January 2018, reflects the applicant was absent without leave from 8 January 2018 to 9 January 2018 and absent without leave on 10 January 2018 through 13 January 2018.

(11) The applicant's VA letter, dated 30 January 2018, reflects the VA providing an early estimate for the applicant's benefits to assist them with their financial planning following their discharge from active duty.

(a) The Overview section states the Army requested a disability assessment from the VA because the applicant was found unfit for continued military service. The VA provided a Rating Decision for the Army. The determination of entitlements to VA benefits is contingent upon the applicant's discharge from Service and upon the applicant having the requisite character of service. In the event the applicant is not separated from service as a result of the IDES process or, upon discharge, lacks the requisite character of discharge, this rating is null and void for purposes of entitlement to VA benefits.

(b) The VA is proposing the following disabilities are related to the applicant's military service, i.e., service connected, to include PTSD with associated cocaine-use disorder, with a proposed rating of 50-percent and a combined rating for service-connected disabilities of 80-percent.

(12) A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces) dated 9 February 2018, reflects the applicant's date of absence as 8 February 2018 and lists four periods of previous of being absent without leave.

(13) A El Paso Police Department Incident/Investigation Report dated 17 May 2018, reflects the applicant as the named subject with the crime incidents of Assault Causes Bodily Injury Family Violence, Criminal Mischief, and Execution of Traffic Warrant.

(14) A DD Form 616 (Report of Return of Absentee) dated 17 May 2018, reflects the applicant (Deserter) was apprehended by civil authorities and returned to military control on 17 May 2018.

(15) A memorandum, Headquarters, U.S. Army Recruiting Command, subject: [Applicant], dated 22 May 2018, the Chief, Military Justice states, on or about 17 May 2018, the El Paso Police Department arrested the applicant, the believe for Domestic Violence against their spouse. The applicant has been Absent Without Leave since 8 February 2018.

(16) A DD Form 458 (Charge Sheet) dated 22 May 2018, reflects charges referred against the applicant was charged with –

(a) Charge I – Violation of Article 85 (Desertion), UCMJ, on or about 8 February 2018, without authority and with intent to remain away therefrom permanently, absent themselves from their unit, to wit: El Paso Recruiting Company, located at El Paso, TX, and did remain so absent in desertion until they were apprehended on or about 17 May 2018.

(b) Charge II – Violation of Article 86 (Absence Without Leave), UCMJ, for four Specifications, of without authority, absent themselves from their unit, to wit: El Paso Recruiting Company, and did so remain absent on four occurrences between on or about 4 January 2017 through 13 January 2018.

(c) Charge III – Violation of Article 90 (Disobeying a Superior Officer), UCMJ for two Specifications for, having received a lawful command from their superior commissioned officer, then known by the accused to be their superior commissioned officer, to provide a urine sample for drug testing, and then, to get back to the station, did, willfully disobey the same, on or about 11 January 2018

(17) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial), dated 6 July 2018, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They understood that they may request discharge in lieu of trial because the charge of violations of Article 85 (Desertion), UCMJ, Article 86 (Absence Without Leave), UCMJ, and Article 90 (Disobeying a Superior Officer), which has been preferred against them, which authorizes the imposition of a bad conduct or dishonorable discharge. The applicant further acknowledged they were guilty of the charge against them or a lesser one. Moreover, they hereby state that under no circumstances do they desire further rehabilitation, for they have no desire to perform further military service.

(a) Prior to completing the form, they have been afforded the opportunity to consult with appointed counsel. They understood, that if their request for discharge is accepted, they may be discharged under conditions which are other than honorable and furnished an Other Than Honorable Discharge certificate. They have been advised and understood the possible effects of an Other Than Honorable Conditions discharge and that as a result of the issuance of such discharge, they will be deprived of many or all Army benefits, that they and that they may be deprived of their rights and benefits as a veteran under both Federal and State law. [Note: page 2 of this memorandum is not in evidence for review.]

(b) They elected to submit statements on their behalf. In their statement they state they are a Soldier who has given everything during their 15-year career. Over the last year they broke down and committed different offenses in which today they are paying the price. The applicant states their experience in the U.S. Army, serving in Korea, their deployments to Iraq, and as an Advance Individual Training instructor. However, in 2017, as a recruiter, they broke down and ended up in the hospital for most of the year. They request a Chapter 10 so they can continue with their treatment, to get better, be the father they need to be, and take care of their family in the new life that is awaiting.

(c) In their spouse's statement, they state they have always been very proud of them as they were always passionate for their work and for all of their achievements. Except for when they returned from their travels very depressed and anxious about all that they had to live during that period. They noticed that their spouse always wanted to remain alone after they came back from their first deployment. They know their spouse needs help. They have been diagnosed with PTSD and is currently going through the Integrated Disability Evaluation System (IDES) process for their illness.

(18) A memorandum, U.S. Army Recruiting Company El Paso, subject: Recommendation for Chapter 10 Request in the Case of U.S. v. [Applicant], dated 9 July 2018, reflects the applicant's company commander recommendation for the approval of the applicant's request for a Chapter 10 discharge. The company commander recommended the applicant be given the characterization of general (under honorable conditions) and states, they recommend this characterization because they are concerned they are able to receive VA medical treatment for their substance abuse which was diagnosed in their latest enlistment period. Until the note written by the applicant for the purpose of this chapter 10, they have never acknowledged their wrongdoing. Despite their behavior, they recommend the option that may result in the best image for the U.S. Army.

(19) A memorandum, U.S. Army Recruiting Battalion San Antonio, subject: Recommendation for Chapter 10 Request in the Case of U.S. v. [Applicant], dated 9 July 2018, reflects the applicant's battalion commander recommendation for the approval of the applicant's request for a Chapter 10 discharge. The battalion commander recommended the applicant be given the characterization of other than honorable conditions and states they strongly support the chapter 10 request. The applicant no longer should be able to serve in the U.S. Army.

(20) A memorandum, U.S. Army, 5th Recruiting Brigade, subject: Recommendation for Chapter 10 Request in the Case of U.S. v. [Applicant], dated 9 July 2018, reflects the applicant's brigade commander recommendation for the approval of the applicant's request for a Chapter 10 discharge. The brigade commander recommended the applicant be given the characterization of other than under honorable conditions and states, the applicant has demonstrated a blatant disregard for their duties and responsibilities as a senior NCO. Their frequent periods of being absent without leave are inconsistent with Army Values and do not warrant a characterization of service as general (under honorable conditions). As a senior NCO they are aware of the many resources available to provided assistance and they failed to utilize those services.

(21) A memorandum, Headquarters, U.S. Army Recruiting Command, subject: Request for Discharge in Lieu of Trial by Court-Martial, undated, reflects the separation authority's approval of the applicant's request for a discharge in lieu of trial by court-martial. The commanding general directed the applicant will be discharge from the U.S. Army with a characterization of service of Under Other Than Honorable Conditions and directed the court-marital charges pending against the applicant will be withdrawn and dismissed effective upon date of separation. The commanding general also directed the applicant will be reduced to the lowest enlisted grade in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions), paragraph 10-1 (Administrative Reductions).

(22) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 6 August 2018. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 15 years, 2 months, 17 days
- item 12f (Foreign Service) – 4 years, 1 month, 2 days
- item 12i (Effective Date of Pay Grade) – 18 July 2018
- item 18 (Remarks) – is void of a continuous honorable service remark
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial
- item 29 (Dates of Time Lost During This Period) – 20180205 - 20180517

i. **Lost Time / Mode of Return:** AWOL, 5 February 2018 – 17 May 2018 / Apprehended by Civil Authorities

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Documents generated during the applicant's IDES process with a proposed VA disability rating of 50-percent for PTSD with associated cocaine-use disorder.

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(6).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Brief in Support of Military Upgrade, with exhibits consisting of –
 - Excerpts of their Service Record to include, DD Form 214, Assignment Orders, DA Forms 1059 (Service School Academic Evaluation), Training Certificates, NCO Evaluation Reports, Awards and Recognitions, Promotion Orders, and Enlisted Record Brief
 - College and Military Transcripts
 - Hazmat Course Transcript
 - Medical Board Documents
 - Photographs
 - Drug Test Result
 - seven 3rd Party Letter of Recommendations
 - Resume
 - Employer Performance Letter
 - Photographs of applicant and their family

6. POST SERVICE ACCOMPLISHMENTS: career as a truck driver.

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 600-8-19 (Enlisted Promotions and Reductions) effective 25 May 2017 prescribed the enlisted promotions and reductions functions of the military personnel system. Paragraph 10-1 (Administrative Reductions) stated when the separation authority determines a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) Paragraph 5-3 (Secretarial Plenary Authority) stated separation under this paragraph is 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 best interest of the Army. 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 memorandums.

(5) Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual of Courts-Martial, 2012, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under Army Regulation 40-501, chapter 8.

(7) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(8) Paragraph 10-10, Limited use evidence, states due diligence should be exercised to avoid including limited use evidence in a separation action under this chapter, but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under this chapter. The separation authority will include a statement in the approval of separation under this chapter that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with DoDI 1010.01 and AR 600-85.

f. 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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

g. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

h. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

(1) Paragraph 4-1 (Scope of the DES) states the IDES features consists of a single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit and a single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

(2) Paragraph 4-3 (Soldiers Absent Without Leave, Undergoing or Pending Adverse Actions or Involuntary Administrative Separation, or Prognosis of Imminent Death) provides a Soldier who is absent without leave is not eligible to be referred to or continue the Medical Evaluation Board (MEB), Physical Evaluation Board (PEB), or final disposition phase of the DES. If the Soldier returns to military control before being dropped from the rolls of the Army, the Soldier's DES processing may resume.

(3) Paragraph 4-3f (Enlisted Soldiers Pending Administrative Separation) provides enlisted Soldiers who approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB or PEB phases of the DES. If the Soldier is in the DES process, their DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial. Soldier under processing for an administrative separation for fraudulent enlistment or misconduct remain eligible to be referred to the MEB. The Soldier's commander must notify the Soldier's PEBLO in writing that administrative separation action has been initiated. The Soldier's completed MEB must be referred to the Soldier's General Court-Martial Convening Authority to determine whether the Soldier is pending both an Army Regulation 635-200 and Army Regulation 635-40 action. The General Court-Martial Convening Authority must decide which action to pursue. Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by U.S. Army Physical Disability Agency for the Secretary of the Army. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the General Court-Martial Convening Authority.

h. 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 Department of Defense Instructions 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.

i. Manual for Courts-Martial (2016 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 85 (Desertion), Article 86 (Absence Without Leave), Article 90 (Disobeying a Superior Officer).

j. 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):

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 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated 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 15 years, 2 months, and 17 days of net active service this period and completed their first full term of service.

c. Review of their DD Form 214 provides administrative error, item 12 (Remarks) is void of the required "CONTINUOUS HONORABLE SERVICE..." remark according to Army Regulation 635-8.

d. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

e. The applicant's AMHRR contains documentation of a diagnosis of PTSD, MDD and Alcohol Use Disorder, during the applicant's term of service. The applicant provided medical documentation during their IDDES process prior to their of a diagnosis of PTSD with associated cocaine-use disorder during their service or after their discharge from service.

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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s): N/A

b. The applicant submitted the following additional contention(s): Applicant (██████████) and counsel (██████████) provided oral arguments in support of the contentions they provided in their written submissions and in support of their documentary evidence.

c. Counsel / Witness(es) / Observer(s): ██████████

10. 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: The applicant held an in-service diagnosis of Post-Traumatic Stress Disorder. The applicant is diagnosed by the VA with Post-Traumatic Stress Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Post-Traumatic Stress Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, avoidance, substance use, and difficulty with authority, the basis for separation is mitigated.

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

b. Response to Contention(s):

(1) The applicant contends stating they served honorably for over 15 years without a single act of indiscretion before their misconduct, they were an outstanding member and valuable asset of the U.S. Army with unlimited potential. The Board determined that this contention was valid and voted to upgrade the characterization of service due to length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments mitigating the applicant's desertion, AWOL, Disobeying a Superior Officer misconduct.

(2) The applicant contends stating while they were serving in the U.S. Army they had a series of health-related incidents both mental and physical that led to their status of AWOL, substance abuse, and eventual discharge. Had they been given the opportunity to correct the situation, they would have. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments fully outweighing the applicant's desertion, absence without leave, disobeying a superior Officer basis for separation.

(3) The applicant contends their discharge and narrative reason for discharge were inequitable. It is unjust to continue to be characterized and punish them for this discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments fully outweighing the applicant's desertion, absence without leave, disobeying a superior Officer basis for separation.

(4) The applicant contends since their discharge, they have developed as a model citizen, they have no criminal record, no involvement in drugs since May 2020, no type of alcohol abuse, or any 'run-ins' with law enforcement since their discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments fully outweighing the desertion, absence without leave, disobeying a superior Officer basis for separation.

(5) The applicant contends an upgrade of their discharge would greatly improve their quality of life as they would have access to VA medical and education benefits. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments fully outweighing the applicant's desertion, absence without leave, disobeying a superior Officer basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant’s characterization of service to General, Under Honorable Conditions because the applicant’s length and quality of service, to include combat service, circumstances surrounding the discharge (Post-Traumatic Stress Disorder diagnoses), and post service accomplishments mitigated the applicant’s misconduct of desertion, absence without leave, and disobeying a superior Officer. 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.

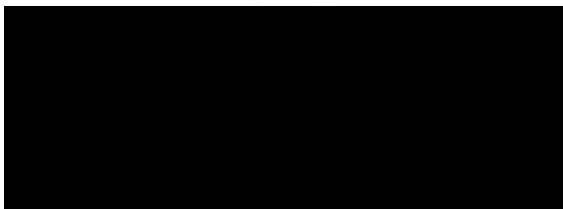
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes**
- b. Change Characterization to: General, Under Honorable Conditions**
- c. Change Reason / SPD code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

3/22/2024



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