

1. Applicant's Name:

- a. **Application Date:** 12 April 2023
- b. **Date Received:** 17 April 2023
- c. **Counsel:** None

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 Bad Conduct. The applicant requests an upgrade to general (under honorable conditions).

(2) The applicant seeks relief stating they are requesting the Board for clemency and to upgrade their Bad Conduct discharge to a general (under honorable conditions). They make this request with deep sense of remorse for their actions and the consequences that ensued. They accept full responsibility for the mistakes they made and the decisions they took which led to their discharge from the U.S. Army.

(3) In 2006, they were sexually abused while stationed in Fort Campbell, which led to Post-Traumatic Stress Disorder (PTSD) and caused significant mental anguish. Despite the challenges, they continued to serve and were later assigned to Fort Lewis-McChord, WA. It was there they became acquainted with an individual online, who claimed to be of Cuban nationality and residing in Canada. Over time, this individual shared disturbing details about their life, including domestic violence and being forced to work as a sexual trader. Moved by their plight, they wanted to help and offered to meet them in Vancouver. They made a poor decision to leave work in their uniform to save time and used their official military passport to enter Canada. While there, this individual requested that they hide in the trunk of their car to cross the border into the United States. Despite their reservations, they agreed, and that individual was found by border officers during an inspection, leading to their arrest and eventual discharged from the U.S. Army.

(4) They were assigned a military lawyer who advised them to take a guilty plea. While they accepted responsibility for their actions, they believe a trial would have provided them with an opportunity to explain their circumstances and the reasons that led them to make a poor decision. They deeply regret the embarrassment they have caused the U.S. Army and the dishonor they have brought upon themselves, their family, and their colleagues. They recognize that their decisions were motivated by a genuine desire to help someone in need. However, their emotions clouded their judgment, and they made a mistake that had serious repercussions.

b. Board Type and Decision: In a records review conducted on 11 March 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. Board member names are available upon request.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Court-Martial (Other) / Army Regulations 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. Date of Discharge: 12 September 2014

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 2, 3 January 2013, on 5 June 2012, the applicant was found guilty of the following:

(a) Three Specifications of Charge II, in violation of Article 134 (General Article), on or about 18 September 2011, knowing that Mr. R____ L____, an alien, had come to or entered the United States in violation of law, conceal the said Mr. L____, in a means of transportation, to wit: an automobile; encourage or induce Mr. L____, an alien, to come to or enter the United States, knowing that such coming to or entry into the United States was or would be in violation of law; and willfully and knowingly use an official passport in violation of the conditions or restrictions therein contained, or in violation of the rules prescribed pursuant to the laws regulation the issuance of passports.

(b) Charge III, in violation of Article 107 (False Official Statement), on or about 18 September 2011, with intent to deceive, make to U.S. Customs and Border Protection officers an official statement, to wit: "I do not know whether or not any other person is inside my vehicle," or words to that effect, which was totally false, and was then known to be so false.

(2) Adjudged Sentence: Reduction to the rank/grade of private/E-1; confinement for 6 months; and a Bad-Conduct Discharge.

(3) Date / Sentence Approved: 3 January 2013 / Only so much of the sentence, a reduction to the rank/grade of private/E-1, confinement for 6 months, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of Bad Conduct Discharge Ordered Executed: 28 August 2014

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 June 2010 / 3 years

b. Age at Enlistment / Education / GT Score: 26 / Some College / 117

c. Highest Grade Achieved / MOS / Total Service: E-5 / 42A2O, Human Resources Specialist / 11 years, 9 months, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Honduras, Korea, SWA / Iraq (5 November 2005 – 29 November 2006)

f. Awards and Decorations: ARCOM-2, AAM-5, AGCM-3, NDSM, GWTSM, KDSM, ICM-CS, NCOPDR, ASR, OSR-4, MOVSM

g. Performance Ratings: 1 June 2011 – 31 May 2012 / Marginal

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 2166-8 (NCO Evaluation Report), covering the period 1 June 2011 through 31 May 2012, reflects in

(a) Part IV (Army Values / Attributes / Skills / Actions), the applicant's rater marked "NO" for "Integrity" and commented, in part, "did not follow orders in regard to crossing the National border without proper authorization."

(b) Part IVd (Leadership), the applicant's rater marked "NEEDS IMPROVEMENT (Some)" and commented, in part, "detained by Canadian Border Patrol for attempting to bring in a non U.S. citizen into the U.S. without proper authorization" and "corrected numerous times for violating AR [Army Regulation] 670-1 (Wear and Appearance of Army Uniforms and Insignia) due to wearing a tongue ring."

(c) Part Va (Rater – Overall Potential for Promotion and/or Service in Positions of Greater Responsibility), the applicant's rater marked "MARGINAL."

(d) Part Vc (Senior Rater – Overall Performance), the applicant's senior rater marked "4" (Fair).

(e) Part Vd (Senior Rater – Overall Potential), the applicant's senior rater rated the applicants overall potential as "4" (Fair).

(f) Part Ve (Senior Rater Bullet Comments), the applicant's senior rater commented "do not promote at this time," "do not sent to Advance Leaders Course at this time," "has potential to serve in positions of higher responsibility; however, legal issues deter from favorable actions," and "NCO unavailable for signature due to confinement."

(2) Installation Management Command, Headquarters, Joint Base Lewis-McChord, WA, dated 8 June 2012, assigned the applicant to the Personnel Control Facility with confinement at Northwestern Joint Regional Correctional Facility, with a reporting date of 8 June 2012. Additional instructions stated the applicant to be confined for 6 months and a bad conduct discharge and reduced from the rank/grade of sergeant/E-5 to private/E-1, effective 19 June 2012.

(3) A DD Form 2718 (Inmate's Release Order) dated 2 October 2012, reflects the applicant's release from confinement on 16 October 2012.

(4) In the applicant's memorandum, subject: Statement of Acknowledgement of Rights to Individual on Application for Excess Leave, dated 2 October 2012, reflects –

(a) In the applicant's court-martial, the court adjudged a punitive discharge on 5 June 2012. The convening authority took initial action in their court-martial pursuant to Rule of Courts-Martial 1107 and approved a punitive discharge. Upon release from confinement, they will be placed on excess or appellate leave.

(b) The applicant understood the following –

- They will not be entitled to any pay or allowance while they are on excess leave

- Their leave balance as of this date is 56 days, request this leave be granted in conjunction with the requested excess leave
- if granted excess leave, they will be completely processed for discharge from the U.S. Army and may receive a separation physical examination prior to their departure on leave
- if their punitive discharge is ultimately set aside, they will have to return to duty to complete any remaining sentence of confinement or any remaining obligated term of military service
- if their punitive discharge is ultimately affirmed, that discharge will be mailed to them at the address shown

(5) Headquarters, I Corps, Joint Base Lewis-McChord, WA Special Court-Martial Order Number 2, dated 3 January 2013, reflects the applicant was arraigned at Joint Base Lewis-McChord, WA and was found guilty of the charges as described in the above paragraph 3c(1). The applicant's sentence was adjudged on 5 June 2012 and their sentence consisted of a reduction in rank/grade to private/E-1; confinement for 6 months, and a Bad Conduct Discharge. The sentence was approved and, except for the part of the sentence extending a Bad Conduct Discharge will be executed.

(6) Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Special Court-Martial Order Number 119, dated 28 August 2014, reflects in the special court-martial case of the applicant, the findings of guilty of Charge III and its Specification were set aside and dismissed. The remaining findings of guilty and the sentence of reduction to private/E-1, confinement for 6 months, and a Bad Conduct Discharge, adjudged on 5 June 2012, have been finally affirmed. All rights, privileges, and property, of which the accused was deprived by virtue of the findings of guilty set aside, will be restored. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with; the Bad Conduct Discharge will be executed.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 12 September 2014, with 11 years, 9 months, and 3 days of net active service this period. The applicant has completed their first full term of service. Their DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 121 (Effective Date of Pay Grade) – 19 June 2012
- item 18 (Remarks) – in part,
 - Continuous Honorable Active Service – 20020730-20100606
 - Excess Leave (Creditable for all purposes except pay and allowances) – 339 Days (20131009 – 20140912)
 - Member has Completed First Full Term of Service
- item 24 (Character of Service) – Bad Conduct
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 3
- item 26 (Separation Code) – JJD [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Court-Martial (Other)
- item 29 (Dates of Time Lost During This Period) – 20120606 - 20121015

i. **Lost Time / Mode of Return:** 132 days (Confinement, 6 June 2012 – 15 October 2012)

j. Behavioral Health Condition(s):

(1) Applicant provided: VA disability printout, reflecting the applicant was rated 70 percent disability for PTSD chronic, with major depressive disorder recurrent moderate without psychosis, with an effective date of 20 February 2019.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), with letter
- Resume
- 3rd Party Statements, consisting of civilian character statements
- High School Diploma and Transcripts
- Military Awards
- Excerpt of VA Disabilities

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) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. 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) Chapter 3, Section II provides the authorized types of characterization of service or description of Separation.

(2) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances; however, in which the conduct or performance of duty reflects by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(6) Paragraph 3-10 (Dishonorable Discharge) stated a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate

(7) Paragraph 3-11 (Bad Conduct Discharge) stated a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, paragraph 3-11 (Bad Conduct Discharge)

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

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

g. Army Regulation 670-1 (Wear and Appearance of Army Uniforms and Insignia), dated 2005, Paragraph 1-14c (Body Piercing) stated, when on any Army installation or other places

under Army control, Soldiers may not attach, affix, or display objects, articles, jewelry, or ornamentation to or through the skin while they are in uniform, in civilian clothes on duty, or in civilian clothes off duty. (The term "skin" is not confined to external skin, but includes the tongue, lips, inside the mouth, and other surfaces of the body not readily visible).

h. Manual for Courts-Martial, United States (2012 Edition) stated, 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 order and discipline in the Armed Forces.

(a) Section 871, Article 71 (Execution of Sentence; Suspension of Sentence), stated if a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, that part of the sentence extending to death, dismissal, or a dishonorable or bad conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review and the review is completed in accordance with the judgment of the Court of Military Appeals.

(b) Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 134 (General Article).

i. Title 10, U.S. Code, section 1552(f), provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice (UCMJ), action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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 applicant requests an upgrade to general (under honorable conditions) or honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.
- c. The applicant's AMHRR indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. The DD Form 214 provides the applicant was discharged with a character of service of Bad Conduct, with the narrative reason for separation as "Court-Martial (Other)." They completed 11 years, 9 months, and 3 days of net active service this period.
- d. The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.
- e. Chapter 3, paragraph 3-11 (Bad Conduct Discharge) stated a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.
- f. Neither the applicant nor the AMHRR provide documentation of a diagnosis of PTSD or of a sexual assault, during their military service.
- g. 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: Adjustment DO; Anxiety DO NOS; Obsessive Compulsive DO (OCD); Mood DO due to general medical condition; Adjustment DO with anxiety; Adjustment DO with anxiety and depressed mood; Depression. VA:PTSD due to MST (70%SC).
- (2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnoses of Adjustment DO; Anxiety DO NOS; Obsessive Compulsive DO (OCD); Mood DO due to general medical condition; Adjustment DO with anxiety; Adjustment DO with anxiety and depressed mood; Depression were made while applicant was on active duty. Service connection for PTSD due to MST establishes it occurred and/or began during military service.
- (3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no

mitigating BH conditions. While the applicant has been diagnosed with PTSD due to MST, neither of these conditions/experiences mitigates the offenses of concealing an undocumented person in an attempt to smuggle them illegally into the country or making a false official statement as neither condition 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.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD due to MST outweighed the medically unmitigated offenses of concealing an undocumented person in an attempt to smuggle them illegally into the country or making a false official statement.

c. Response to Contention(s):

(1) The applicant contends they request the Board for clemency, and they make this request with deep sense of remorse for their actions and the consequences that ensued. They accept full responsibility for the mistakes they made and the decisions they took which led to their discharge from the U.S. Army. The Board considered this contention and appreciates the applicant's remorse. Based on no medical mitigation and the severity of the misconduct, the Board determined the discharge was proper and equitable.

(2) The applicant contends in 2006, they were sexually abused while stationed in Fort Campbell, which led to PTSD and caused significant mental anguish. The Board considered this contention and recognizes the applicant's trauma. The Board's medical advisor reviewed the applicant's file and medical records and determined neither of these conditions/experiences mitigates the offenses of concealing an undocumented person in an attempt to smuggle them illegally into the country or making a false official statement as neither condition affects one's ability to distinguish right from wrong and act in accordance with the right.

(3) The applicant contends they were assigned a military lawyer who advised them to take a guilty plea. While they accepted responsibility for their actions, they believe a trial would have provided them with an opportunity to explain their circumstances and the reasons that led them to make a poor decision. The Board considered this contention and found no record or corroborating evidence of arbitrary or capricious acts by the installation or chain of command.

(4) The applicant contends they deeply regret the embarrassment they have caused the U.S. Army and the dishonor they have brought upon themselves, their family, and their colleagues. They recognize that their decisions were motivated by a genuine desire to help someone in need. However, their emotions clouded their judgment, and they made a mistake that had serious repercussions. The Board considered this contention and appreciates the applicant's remorse. Based on no medical mitigation and the severity of the misconduct, the Board determined the discharge was proper and equitable.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's PTSD due to MST did not mitigate the offenses of concealing an undocumented person in an attempt to smuggle them illegally into the country or making a false official statement as neither condition affects one's ability to distinguish right from wrong and act in accordance with the right. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant does not have a BH condition that mitigates the applicant's misconduct. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. Therefore, the applicant's discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, 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.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

3/19/2024

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