

1. Applicant's Name:

- a. **Application Date:** 4 May 2023
- b. **Date Received:** 10 May 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 general (under honorable conditions). The applicant requests an upgrade to honorable, change their reentry code to allow reentry to the military, and any other relief the Boards deems appropriate.

(2) The applicant, through counsel, seeks relief stating they are the victim of an injustice perpetrated upon them by unscrupulous superiors who illegally altered medical records in order to have them deploy to a combat zone despite having had complicated surgery just a few days before deployment. When they returned from their deployment due to their medical condition, they were ostracized by their leadership, who attempted to force them out of the service under Army Regulation 635-200, paragraph 5-17 (Other Designated Physical or Mental Conditions), claiming they had a mental condition. When that effort failed, their superiors bullied them into a confrontation during which they responded to those leaders in a manner they deemed appropriate. They were charged and convicted at a Special Court-Martial and given a Bad Conduct discharge.

(3) The applicant applied to the Army Discharge Review Board (ADRB) to request their discharge be upgraded to honorable and to change their reentry code. The Board failed to grant the appropriate relief, the ADRB only upgraded their discharge to general (under honorable conditions). The applicant applied for reconsideration and was again denied. The ADRB did not go far enough, the applicant is entitled to an honorable discharge. They should never have been through a court-martial, their leadership painted them as a malingerer because they foolishly decided to deploy a Soldier who had a serious surgery and that Soldier had to redeploy back to home station. An upgrade to an honorable discharge would restore the applicant's access to the Montgomery GI Bill benefits that they have earned to assist them with law school tuition.

(4) Counsel attests to the applicant's background prior to joining the U.S. Army, their early military service, their military service with the company and the alleged toxic and abusive leadership, their positive performance once they transferred from that unit, their process of going through a special court-martial and appeal, and their previous ADRB application and procedural posture.

(5) Counsel argues that the applicant should have their record amended because their company leadership at the time divested themselves of rank, the applicant could not appreciate the criminality of their actions at the time of the incident, the government failed to meet its burden of proof that the applicant was drunk and disorderly; and their 7 years of exemplary performance and service to the United States should not be defined by a singular event brought on by exceptional circumstances.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230008632

Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the Army Discharge Review Board (ADRB) in Docket Number AR20170007671 on 27 June 2018, AR20180014916 on 17 July 2019, and AR20210002439 on 26 January 2023.

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 5 March 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: Court-Martial (Other) / Army Regulations 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. Date of Discharge: 20 February 2015

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 1, dated 3 January 2013, reflects on 6 September 2012, the applicant was found guilty of the following:

(a) Three Specifications of Charge I, in violation of Article 89 (Disrespect Towards a Superior Commissioned Officer), on or about 30 March 2012 –

- behave themselves with disrespect toward First Lieutenant (1LT) M____ R____, their superior commissioned officer, by using abusive language toward 1LT R____, to wit: "f____ you all" and "b____," or words to that effect
- behave themselves with disrespect toward 1LT R____, their superior commissioned officer, by yelling and pointing their finger at 1LT R____

(b) Charge II, in violation of Article 90 (Willfully Disobeying a Superior Commissioned Officer), on or about 30 March 2012, having received a lawful command from 1LT R____, their superior commissioned officer, to stand at parade rest, did, at or near Schofield Barracks, Hawaii, willfully disobey the same.

(c) Five Specifications of Charge III, in violation of Article 91 (Insubordinate Conduct Toward Warrant Officer, Noncommissioned Officer (NCO) or Petty Officer), on or about 30 March 2012 – .

- having received a lawful order from First Sergeant (1SG) R____ R____, a superior NCO, to "at ease," an order which it was their duty to obey, did willfully disobey the same
- disrespectful in deportment toward 1SG R____, a superior NCO, by screaming and yelling toward 1SG R____
- strike Staff Sergeant (SSG) T____ D____, an NCO, by physically knocking down the NCO's right arm with their hand
- having received a lawful order from Sergeant (SGT) D____ T____, to stand at parade rest, an order which it was their duty to obey, willfully disobey the same
- was disrespectful in language toward SGT T____, by saying to them "f____ you" or words to that effect

(d) Charge IV, in violation of Article 134 (General Article), on or about 30 March 2012, was drunk and disorderly, such conduct being prejudicial to good order and discipline in the Armed Forces and being of a nature to bring discredit upon the Armed Forces.

(2) **Adjudged Sentence:** Reduction to the rank/grade of private/E-1; confinement for 90 days; and a Bad-Conduct Discharge.

(3) **Date / Sentence Approved:** 24 January 2013 / the sentence is approved and, except for that portion of the sentence pertaining to a bad-conduct discharge will 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:** 9 January 2015

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 4 November 2008 / 3 years

b. **Age at Enlistment / Education / GT Score:** 41 / Bachelor's Degree / 110

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 68X1O, Mental Health Specialist / 6 years, 1 month, 14 days

d. **Prior Service / Characterizations:** AD, 14 January 1986 – 29 August 1989 / HD
(Break in Service)
AD, 20 September 2000 – 9 November 2000 / UNC
(Break in Service)
ARNG, 13 March 2008 – 25 September 2008 / HD

e. **Overseas Service / Combat Service:** Hawaii, Korea, SWA / Iraq (7 April 2011 – 25 May 2011)

f. **Awards and Decorations:** AAM-3, AGCM, NDSM, GWTSM, ICM-CS, ASR, OSR

g. **Performance Ratings:** NA

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

(1) A DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period 14 January 1986 through 29 August 1989, shows in –

- item 12c (Net Active Service This Period) – 3 years, 7 months, 16 days
- item 24 (Character of Service) – Honorable
- item 25 (Separation Authority) – Army Regulation 653-200, Chapter 5
- item 26 (Separation Code) – JFX [Personality Disorder]
- item 27 (Reenlistment Code) – RE-4
- item 28 (Narrative Reason for Separation) – Personality Disorder

(2) A DD Form 215 (Correction to DD Form 214), dated 4 October 1991, reflects the applicant's reenry code was changed to RE-3.

(3) On 10 November 1993 the Army Board for Correction of Military Records (ABCMR) denied the applicant's request to change their reentry (RE) code which would allow reenlistment, in effect, this constitutes a request for removal or waiver of those disqualifications which preclude reenlistment. The ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

(4) A DD Form 4 (Enlistment Document) dated 20 September 2000, reflects the applicant enlisted in the Regular Army for a period of 4 years.

(5) On 1 November 2000, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separate them for Pattern of Misconduct, under Army Regulation 635-200, paragraph 14-12b, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They elected to submit a statement on their behalf detailing the circumstances of their developmental counseling, nonjudicial punishment and their desire to remain in the U.S. Army.

(6) A memorandum, U.S. Army Chaplain Center and School, subject: Report of False Official Statements, dated 3 November 2000, the applicant's company commander states the applicant's rebuttal memorandum contains several false statements and/or exaggerations, which seem to be made by them to further their case of appeal. The commander attached the applicant's rebuttal with known exaggerations and lies highlighted.

(7) A memorandum, Headquarters and Headquarters Company, U.S. Army Chaplain Center and School, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Pattern of Misconduct, dated 6 November 2000, the applicant's company commander submitted the request to separate the applicant prior to the expiration of their term of service, stating they do not consider it feasible or appropriate to accomplish disposition other than separation from the U.S. Army. This Soldier has shown through their flagrant disregard of military authority and pattern of misconduct that they are unfit for further military service. All efforts to rehabilitative them have failed.

(8) A memorandum, Headquarters, Victory Brigade, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Pattern of Misconduct, [Applicant], dated 9 November 2000, the separation authority approved the recommendation for the separation of the applicant. The requirement for a rehabilitative transfer is waived. Further duty of the Soldier would create serious disciplinary problems and would not be in the best interest of the Army as it would not produce a quality Soldier. The separation authority the applicant would be separated under the provisions of Army Regulation 635-200, paragraph 14-12b, for pattern of misconduct and will be issued an Uncharacterized Discharge Certificate.

(9) On 9 November 2000, the applicant was discharged accordingly, the DD Form 214 shows in –

- item 12c (Net Active Service This Period) – 1 month, 20 days
- item 12d (Total Prior Active Service) – 3 years, 7 months, 16 days
- item 12e (Total Prior Inactive Service) – 11 years, 8 months, 16 days
- item 24 (Character of Service) – Uncharacterized
- item 25 (Separation Authority) – Army Regulation 635-200, paragraph 14-12b
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) - Misconduct

(10) On 23 April 2001, the Army Discharge Review Board (ADRB) determined the applicant was properly and equitably discharged. The Board determined the applicant was assigned the appropriate RE Code for a discharge by reason of misconduct. The Board was satisfied that all requirements of law and regulation were met and that the rights of the applicant were fully protected throughout the separation process.

(11) On 10 February 2004, the ABCMR denied the applicant's request that the Separation Program Designator and Reentry Eligibility codes be corrected. The ABCMR concluded, contrary to the applicant's contention, there is no evidence or indication that their discharge was based on their previous discharge and the circumstances surrounding their previous discharge. The applicant's discharge was based upon repeated insubordination and misconduct they committed during the period of service in question. The applicant's brigade commander properly waived the rehabilitative transfer requirement in accordance with the applicable Army regulation. Given the applicant's repeated acts of insubordination and misconduct, this waiver would appear proper and prudent. The ABCMR determined the evidence presented does not demonstrate the existence of a probable error or injustice; therefore, the overall merits of this case are insufficient as a basis for correction of the record.

(12) On 12 March 2004, the ADRB reconsidered the applicant's previous case AC93 08849, dated 10 November 1993, and determined the narrative reason for discharge for personality disorder was inequitable. The Board determined the applicant presented evidence of sufficient merit to mitigate the narrative reason for discharge. In addition, the Board noted the applicant provided medical evidence indicating they do not suffer from a personality disorder. Accordingly, the Board voted to grant relief by changing the narrative reason for discharge to Secretarial Authority and an RE code to "1." Army Review Boards Agency (ARBA) issued the applicant a corrected DD Form 214 to reflect these corrections.

(13) On 16 August 2005, the ABCMR denied the applicant's requests, that the reason and authority for discharge on their DD Form 214, for the period ending 29 August 1989, be corrected to show they were a victim of domestic violence and void all documents used to determine the type of discharge they received; reconsideration of their previous request that the reentry eligibility (RE) code, characterization of service and reason and authority for discharge on their DD Form 214, for the period ending 9 November 2000 be corrected; reinstatement into the U.S. Army, back pay and allowances; reestablishment of pay grade and service time; and educational assistance.

(a) The ABCMR conclude the applicant's administrative separation on 9 November 2000 was accomplished in compliance with applicable regulations with no indication of procedural error. The type of discharge directed, and the reasons therefore were appropriate considering all the facts of the case.

(b) The applicant's contentions regarding their discharge were noted. There is no evidence in the available records nor has the applicant submitted any evidence to support their contention that the narrative reason for separation, the separation authority, and the character of service that is currently reflected on their DD Form 214 is incorrect. The evidence of record clearly shows that they were counseled approximately six times in less than 2 months for being insubordinate, being disrespectful, lack of motivation, communicating threats, disorderly conduct, and failure to obey orders, all of which amounts to misconduct. They also received nonjudicial punishment imposed against them as a result of their acts of misconduct.

(c) The ABCMR determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the ABCMR determined that the overall

merits of this case are insufficient as a basis for correction of the records of the individual concerned.

(14) A National Guard Bureau Form 22 (Report of Separation and Record of Service) reflects the applicant's service in the National Guard from 25 September 2007 through 25 September 2008

(15) A DD Form 4 (Enlistment Document) dated 4 November 2008, reflects the applicant's enlistment in the Regular Army for a period of 3 years.

(16) A DA Form 4187 (Personnel Action) dated 2 October 2012, reflects the applicant's unit reported their duty status changed from "Present for Duty" to "Confinement," effective 6 September 2012.

(17) A memorandum, Headquarters, 25th Infantry Division, subject: Voluntary Excess Leave Awaiting Punitive Discharge, dated 8 November 2012, reflects the commanding general's approval of the applicant request for voluntary excess leave while they are awaiting appellate review of their approved punitive discharge.

(18) Headquarters, 25th Infantry Division Special Court-Martial Order Number 1, dated 24 January 2013, reflects the applicant was arraigned at Wheeler Army Airfield, Hawaii and was found guilty of the charges as described in the above paragraph 3c(1). The applicant's sentence was adjudged on 6 September 2012 and their sentence consisted of a reduction in rank/grade to private/E-1; confinement for 90 days, 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.

(19) Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Special Court-Martial Order Number 3, dated 9 January 2015, reflects in the special court-martial case of the applicant, the sentence of reduction to private/E-1, confinement for 90 days, and a Bad Conduct Discharge, adjudged on 6 September 2012, have been finally affirmed. The accused was credited with 11 days of confinement against the sentence to confinement. 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.

(20) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 20 February 2015, with 6 years, 1 month, and 14 days of net active service this period. 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 September 2012
- item 18 (Remarks) – in part,
 - Excess Leave (Creditable for all purposes except pay and allowances) – 834 Days (20121109 – 20150220)
 - 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 [Court Martial (Other)]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Court-Martial (Other)

- item 29 (Dates of Time Lost During This Period) – 20120906 - 20121108

(21) On 13 June 2018 the ADRB denied the applicant's request to upgrade their characterization of service of Bad Conduct to Honorable. The Board determined –

- the relevant and material facts stated in the court-martial specification are presumed by the ADRB to be established facts
- the record does not contain any indication or evidence of arbitrary or capricious actions by the applicant's command and all requirements of law and regulation were met
- the character of the applicant's discharge is commensurate with their overall service record
- the service records contains no evidence of a mental or medical disorder diagnosis and the applicant did not submit any evidence to support the contention that the discharge was the result of any medical condition
- the finding of the applicant's separation was both proper and equitable

(22) On 17 July 2019, the ADRB granted the applicant's request for an upgrade of the characterization of their discharge; however, the upgrade granted was a general (under honorable conditions). The Board denied the applicant's request to change their reentry eligibility code. In a personal appearance hearing, the Board determined that clemency is warranted based on the applicant's length and quality of service, to include combat service, a prior period of honorable service, and post service accomplishments. ARBA issued the applicant a corrected DD Form 214, correcting the character of service to General (Under Honorable Conditions).

(23) On 26 January 2023, the ADRB denied the applicant's request to change the characterization of their service from general (under honorable conditions) to honorable and to change their reentry eligibility code. The Board determined –

- the applicant did not submit any evidence, other than the applicant's own statement, to support their contention
- there is no evidence in the Army Military Human Resource Record (AMHRR) that the applicant sought assistance or report toxic and abusive leadership
- there is no evidence in the AMHRR the applicant ever sought mental health assistance before committing misconduct, which led to their separation, their AMHRR is void of a mental status evaluation
- based on Army Regulation 601-210, the applicant was appropriately assigned a RE code of "4", this RE code cannot be waived, and the applicant is no longer eligible for reenlistment
- while an isolated incident was used as the basis for separation, the nature of the event and lack of sufficient mitigating circumstances for consideration did not warrant further clemency and the general (under honorable conditions) upgrade received from a prior Board is proper and equitable
- by disrespect, disobedience, striking of an NCO, and being drunk and disorderly, the applicant diminished the quality of service below that meriting an honorable discharge at the time of separation

i. Lost Time / Mode of Return: 64 days (Confinement, 6 September 2012 – 8 November 2012)

j. Behavioral Health Condition(s): 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)
- Counsel Letters
- Applicant's Letter to the President of the United States and the Secretary of the Army
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Memorandum in Support of Application for Review of Discharge, with enclosures –
 - ARBA Letter
 - Telephonic Hearing Notification Response Form
 - Applicant's Letter – Speech for the Army Review Board Hearing, with attached supporting documents
 - Applicant's Identifying Information
 - College Transcript
 - Previous Discharge Documentation
 - ADRB and ARBA Letters, with Case Report and Directive
 - DD Forms 214

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.

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. 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 89 (Disrespect Toward Superior Commissioned Officer), Article 90 (Assaulting, Willfully Disobeying Superior Commissioned Officer), Article 91 (Insubordinate Conduct Toward Warrant, Noncommissioned, Petty Officer), and Article 134 (General Article).

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 honorable. The applicant's 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, which their previous case with ADRB was upgraded to general (under honorable conditions), with the narrative reason for separation as "Court-Martial (Other)." They completed 6 years, 1 month, and 14 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 Reprisal/Whistleblower incident 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. 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 (Ms. A.P.) and counsel (Ms. M.D.) 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): Ms. M.D. (counsel)

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 diagnoses/experiences: During the applicant's first term of service, in 1989, the applicant was diagnosed with an Adjustment Disorder and Personality Disorder with Dependent and Histrionic features. Additionally, during that first term of service, the applicant experienced Military Sexual Trauma and Intimate Partner Violence. The applicant was not diagnosed in the term of service under review nor is the applicant service connected for a behavioral health condition.

(2) Did the condition exist, or experience occur during military service? **Yes.** During the applicant's first term of service, in 1989, the applicant was diagnosed with an Adjustment Disorder and Personality Disorder with Dependent and Histrionic features. Additionally, during that first term of service, the applicant experienced Military Sexual Trauma and Intimate Partner Violence. The applicant was not diagnosed in the term of service under review.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and while the Military Sexual Trauma / Intimate Partner Violence are acknowledged, the applicant excelled for a decade after the experiences before re-enlisting, passed a re-enlistment exam, and asserts the applicant did well until the basis for separation; the applicant was not impaired or impacted by the prior experiences. Rather, the applicant's misconduct aligns with the prior characterological diagnosis. Although characterological diagnoses provide context, they are not mitigating as the individual is aware of their actions and consequences. Moreover, documentation outlines purposeful actions with justification; cognitive functioning was intact.

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

b. Response to Contention(s):

(1) The applicant contends their company leadership at the time divested themselves of rank. The Board determined that the applicant's rank inquiry does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained from a Veterans' Service Organization or online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf>.

(2) The applicant contends they could not appreciate the criminality of their actions at the time of the incident. The Board considered this contention and determined that the applicant's inability to appreciate the criminality of their actions did not outweigh the seriousness of the applicant's failure to obey a General lawful order by consuming an alcoholic beverage in Iraq and wrongful use of marijuana.

(3) The applicant contends the government failed to meet its burden of proof that the applicant was drunk and disorderly. The Board considered this contention but determined 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(4) The applicant contends their 7 years of exemplary performance and service to the United States should not be defined by a singular event brought on by exceptional circumstances. The Board considered this contention but determined that the applicant's offense of failure to obey a General lawful order by consuming an alcoholic beverage in Iraq and wrongful use of marijuana was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

c. 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.

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 Disorder, Personality Disorder with Dependent and Histrionic features, or the Military Sexual Trauma and Intimate Partner Violence the applicant experienced during the first term of service did not excuse or mitigate the offenses during the term of service under review of failure to obey a General lawful order by consuming an alcoholic beverage in Iraq and wrongful use of marijuana. The Board also considered the applicant's contention regarding the failure to obey a General lawful order by consuming an alcoholic beverage in Iraq and wrongful use of marijuana was a singular event brought on by exceptional circumstances and found no mitigating factors as the applicant was aware of their actions and consequences and do not warrant a discharge upgrade. The applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230008632

11. 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:

3/22/2024

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