

1. Applicant's Name: [REDACTED]**a. Application Date:** 17 May 2023**b. Date Received:** 17 May 2023**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable, a narrative reason change, as well as the separation and reentry codes changed.

b. Counsel states. The applicant seeks relief contending, the applicant was born and raised in New York. The applicant's parents divorced when the applicant was four and the applicant's mother passed from pneumonia when the applicant was seven years of age, left to be raised by an older sibling. The applicant's father served as a marine in Vietnam and the applicant's grandfather was a member of the 42nd Infantry Division during World War II. The applicant's grandfather's division participated in the liberation of the Dachau concentration camp in Germany. Growing up with this influence, the applicant always had an admiration and respect for the U.S. Military.

(1) The applicant was fourteen years old and living in New York City during the September 11, 2001, attacks. Seeing the way that so many courageous people responded to the attacks, including first responders and service members, inspired them to enlist, right after graduating from high school. Through their enlistment, they sought to follow in the footsteps of their father and grandfather, to serve their country.

(2) After completing basic training, they was deployed to Schweinfurt, Germany, and then to Baghdad, Iraq. In Iraq, they was stationed primarily at Forward Operating Base (FOB) Loyalty, Combat Outpost (COP) Apache, and Camp Taji. Most of their tour was spent in Adhamiya, a largely Sunni neighborhood surrounded by a majority Shiite portion of Baghdad. During their tour, they was a Squad Automatic Weapon (SAW) gunner on both Bradley Fighting Vehicles (Bradley) and Humvees, and toward the end of their tour, they was the fireteam leader. Their normal duties included missions and patrols in Adhamiya, including frequent missions, often at night, to capture high-value targets, identify and assist in removing improvised explosive devices (IEDs), and build trust with the local population.

(3) The unit and the applicant often tried to build a good relationship with the local community by providing newspaper, soccer balls, and restoring utilities, including electricity and water, for the neighborhood. Missions and patrols regularly involved contact with the enemy, and they encountered injured, dead, and dying civilians, allies, and American Soldiers often. Those experiences were very stressful and disheartening. While working with the local community, their unit and often spoke with civilians, through interpreters, to try to obtain support for their mission and gather intelligence about targets, insurgent activity, and the location of IEDs. That was stressful and upsetting

because many times an individual would pretend to be friendly to our cause while providing false tips to lure them into traps and ambushes. In Adhamiya, the enemy did not wear a uniform, so they never knew who the enemy was. That reality taught them to be constantly on alert and always vigilant because almost anyone could be a threat.

(4) The applicant also witnessed on numerous occasions, wounded Iraqi and United States Army Soldiers being brought to their aid station. Seeing the gruesome injuries was also traumatic for them. When they encountered deceased or injured Soldiers and allies, they struggled with intense feelings of guilt for not being able to protect them. They also felt a real, constant fear that, like those who were injured or dead, the applicant could be injured or killed on any patrol. While on patrol, they did their best to be vigilant at all time and tried to spot IEDs and enemy combatants before they could harm their unit. As a SAW gunner, they were often dismounted, which left them exposed to enemy combatants and the snipers that often targeted them. They regularly were the gunner of Bradleys and Humvees, which also left them exposed to IEDs and grenades. During their tour, their unit and they frequently encountered enemy attacks including grenades, snipers, small arms fire, and IED explosions. On multiple occasions, they directly witnessed, and narrowly avoided, explosions from grenades and IEDs.

(5) On patrol, they also regularly assisted explosive ordinance disposal (EOD) teams as they cleared IEDs, including rockets, roadside bombs, explosively formed penetrators (EFPs), and other explosives from neighborhood streets. IEDs were responsible for the deaths of many of the Soldiers in their unit, including their mentor SGT J. C. and many of their friends, including PFCs C. E. M. and R. J. H. They also caused serious injuries to many other Soldiers in their unit and close friends, including PFC A. C., SPC T. F. and PVT O. A. The applicant witnessed the aftermath of several terrible IED attacks, and to this day, they are disgusted by the memories of watching blood coagulate on the vests of injured Soldiers that they tried to help. At night, they could hear mortars landing near FOB Loyalty and still remember the sound.

(6) On patrol they often found the bodies of Iraqi civilians who had been executed by insurgents and left on the street as a way of terrorizing the local population and trying to intimidate their unit and friendly forces. At times the bodies were set-up to explode or used as traps to attack their unit. While they found so many bodies during their fifteen-month tour that they cannot even remember them all, one particularly awful episode is burned in their memory. While patrolling a neighborhood street they found a still-living Iraqi civilian who had the back of their skull blown off. When the applicant found them, their brain was sticking out from the back of their head and the applicant could see it trembling as they suffered, and eventually died, in the street beside them.

(7) They was also regularly involved in rescue efforts and helped medavac wounded Soldiers out of combat zones. For example, on 3 September 2006, not long after they arrived in Adhamiya, the applicant remember hearing a radio call about an IED blast. The platoon and the applicant rushed to the scene, and they saw an American Soldier lying dead in the street. For some reason, the fact that their boots were completely clean despite suffering a fatal injury stuck with them. That was the first time they saw a dead American Soldier and they felt sick to their stomach.

(8) Just a few weeks later, on 20 September 2006, they was on patrol when they heard a loud explosion and saw black smoke rising from another part of Adhamiya a few minutes away. They responded to the attack and the applicant saw a burning Humvee and multiple Soldiers who were seriously wounded from a grenade and IED

attack. The applicant was part of a group that helped load two wounded Soldiers into vehicles so that they could be medevac'd for treatment. As they loaded one Soldier into their vehicle, they could hear bullets exploding in the burning Humvee and noticed that they injured Soldier's leg was mangled and barely attached to their body. Once the Soldier was loaded into their vehicle, the applicant had to ride on top of the Humvee and braced their foot with a strap while holding on to the vehicle with one hand and their weapon in the other. The driver sped through the streets as fast as possible while the applicant clung to the vehicle, recognizing that if they fell, the applicant could be seriously injured or could die, but also that they needed to get the injured Soldier medical attention as quickly as possible. Hanging onto the vehicle as they medevac'd the Soldier from the scene of the attack left them exposed and they was worried about potential enemy attacks. The experience of witnessing the burning Humvee and severely injured Soldiers was even more disturbing and traumatic. After seeing the injured Soldier received medical treatment, they returned to base. The applicant tried to clean their uniform but no matter how many times they tried to clean them; they could not get the injured Soldier's blood off of their boots. Those stains remained as a reminder of that horrific day, which they still clearly remember today.

(9) In the attack on 20 September 2006, PFC E. M. K. was killed. They was the applicant's friend and their death, alongside the gruesome injuries and danger they experienced that day, left them with fear, anger, and sadness. The next month on 10 October 2006, the applicant was on patrol late in the day when they stopped a suspicious vehicle. They happened to turn to the side and witnessed an explosion a few yards away beside PFC C. B. A grenade exploded beside a trash pile in the street and PFC was injured. Their patrol immediately worked to secure the area as they came under fire from an insurgent with an automatic weapon. They took cover behind the driver's door of their vehicle and returned fire at the insurgent. PFC was medevac'd and returned to FOB Apache.

(10) They earned their Combat Infantryman Badge for their actions on 10 October and was very proud of their efforts to aid their patrol and PFC B. At the same time, the experience was very difficult for them to process. The stress of the grenade attack, which occurred so close to them, and which they directly witnessed, was severe. PFC's injury added to the growing number of injuries to friends and fellow Soldiers that the applicant witnessed and further contributed to the growing realization that they could be seriously injured or killed on any patrol. Similarly, coming under automatic weapons fire and returning fire contributed to their stress and fear. The constant risk of death or severe injury was emotionally exhausting and created a sense that they needed to be vigilant at all times. As these experiences continued to mount, they regularly felt guilt for not being able to do more to protect their fellow Soldiers and deep sadness for those who were severely injured or killed.

(11) Four days after they saw PFC B. get injured, on 14 October, their patrol came under fire from enemy forces. They were in the Humvee turret while SGT S. L. stood beside the vehicle. Like the last engagement, they had stooped their patrol to investigate suspicious activity when SGT L. shouted as they were shot. The applicant, again, happened to be looking at just the moment to witness the bullet hit the road after it had passed through SGT's body. The applicant immediately returned fire and then the patrol raced to the Green Zone to get medical assistance for SGT. Once SGT L. was in treatment, they returned to the scene of the attack to search for the shooter but could not find them.

(12) That same month, SGT G. D. S., and SGT W. M. M. from their unit, were killed while on patrol and many others were also injured or killed. These frequent deaths and injuries to their friends and fellow service members weighed heavily on the applicant and contributed to a growing fear but also even more detachment and numbness. Becoming numb to the continual violence felt necessary to help complete the mission and try to protect their fellow Servicemembers and themselves. Losing SGT G. and SGT M. was particularly hard because they had already served in the Battle of Fallujah. When they died in Adhamiya, it underscored the reality that anyone could be killed by an IED or a surprise attack, regardless of their experience.

(13) In November 2006, their unit saw many more deaths and injuries. They were close with PFC E. G., SPC M. Y. and PFC J. R. all of whom were injured in IED attacks that month. While they survived the attacks, the close calls were frightening, and reinforced their realization when SSG S. and SGT M. died – you never knew when it was your turn to get blown up. IED and grenade attacks were always a threat throughout the rest their tour. For example, they remember hearing about PFC R. A. M. jumping onto a grenade that had been thrown into their Humvee during a patrol. PFC M. earned the Medal of Honor for their heroism. The applicant knew PFC M. well, and he was on the turret at the time the grenade was thrown, a duty that they regularly performed. Losing PFC M. was very painful for them and had them wondering what the applicant would have done in the same situation, contributed to their fear and anxiety

(14) In order to continue to serve effectively and do their best to complete the mission and protect the other Soldiers, the applicant became numb to the horrific violence they encountered almost daily. To press forward, they had to become detached, but that detachment did not stop the growing feelings of anger, helplessness, and despair, and the associated traumatic memories that they could not escape. Despite these experiences, they prided themselves in always doing everything they could to protect their fellow Soldiers and complete the mission.

(15) On 29 December 2006, they was on patrol near the Abu Hanifa Mosque, when the applicant heard a large explosion in the distance. They remember seeing black smoke over the neighborhood as they received a call for help over the radio. The applicant operated their Humvee's turret, providing security as injured Soldiers were loaded into nearby vehicles and then escorted the injured Soldiers to the Green Zone for medical treatment. As the Soldiers were carried out of the vehicles, they remember seeing their blood everywhere, including on their vests, rifles, and all over the vehicles. The applicant also noticed a Soldier whose leg seemed to be attached only by a thin thread of muscle tissue. This horrific experience further added to their trauma, fear, anxiety, distress, and detachment. In particular, the memory of the blood covered vests, rifles, and vehicles has stayed with them to this very day.

(16) About a month later, their friend PFC R. J. H. was killed and others were seriously injured, when their patrol hit an IED. The next month, another friend PFC C. E. M. was killed by a grenade while they were serving as a turret gunner. The applicant saw PFC M's body carried out of a Humvee at their base and remember feeling physically sick and emotionally overwhelmed at the sight of their body. To this day, the applicant is shocked at how pale they looked. PFC died doing the same job that they applicant did regularly. Losing PFC M. hurt because he and the applicant showed up to the platoon on the same day, and it provided a reminder that the applicant could die in the very same way on any patrol.

(17) The next month, in March 2007, their friend PFC A. G. Jr. was killed when their vehicle was struck by an IED. When the applicant learned of the news with the other Soldiers in their unit, the applicant remember the intense grief they experienced. The continual toll of deaths and injuries from IED and grenade attacks made them feel that their time would also come. Not long after that, the applicant was on patrol mounted in a Humvee turret when an insurgent attempted to initiate an ambush using rocket propelled grenades (RPG) and IEDs. During the attack an RPG exploded just behind their vehicle. The applicant was showered with debris from the explosion and heard the Bradley directly behind them being firing. Then, an IED exploded just in front of the patrol and an insurgent ran down an alleyway nearby. The applicant drew their pistol but they turned the corner before they could shoot at them. They called in air support and completed the patrol.

(18) Around that same time, they responded to a tip about a suspected IED. The applicant was in the turret of the Humvee as a deep-buried IED exploded behind the vehicle and the sky turned completely black around them. Until the debris began to clear, they had no idea whether they or any other member of the patrol had been hit. Thankfully, the applicant eventually saw a Bradley emerge safely from the smoke behind their vehicle and they continued their patrol. Those type of close calls, accompanied by the many tragic deaths and injuries to their friends and fellow Soldiers continued to impact the applicant's mental health. While they did everything, they could to continue the mission and serve to the best of their ability, with each awful experiences the pain, grief, and numbness grew within them.

(19) In May 2007, the applicant was on the base when they learned of an IED attack that injured five of their closest friends in the service. When they brought the Humvees into the base, the applicant went to clean the damaged vehicle but was stopped by another Soldier with their hand just inches from a layer of dark pink material. The applicant had not realized until that moment that the interior of the vehicle was covered in their friends' burnt flesh. They will never forget the sight and smell experienced that day. A quick reaction force was spun up immediately and the applicant went out to help. The applicant's mentor, SGT C., eventually died from his injuries in that Humvee. Their friend, SPC H. died in the vehicle. Their good friends PFC A. C., SPC T. F., and PVT O. A., were all severely injured in the attack. When the applicant was able to take R&R, they visited them in the burn ward.

(20) Losing SGT C. and SPC H. was extraordinarily difficult for the applicant. They admired SGT and still believe that he was the greatest NCO a Soldier could have. He cared about everyone in the unit and worked constantly to share what he had learned throughout his military career. After that IED attack, the applicant was as angry as they have ever been and overwhelmed with grief, rage, and a feeling of helplessness. The smell of their burnt flesh has never left the applicant's memory. Around this time, their unit had their tour extended by three months, for a total of fifteen months in Iraq.

(21) In June 2007, Second Platoon lost five Soldiers in an IED attack similar to the attack that killed SPC H. and SGT C. The applicant new the Soldiers who died in the attack and this loss just further contributed to their anger, sadness, and fear. The next month, 1SG J. R. M. killed himself while on patrol. His death was shocking and terribly saddening to the applicant. After almost a year of steady losses in their unit, the applicant, and many others, felt helpless, traumatized, numb, fearful and constantly bothered by terrible memories, including many of those described above. The applicant is very proud of their service in Adhamiya, and if given the choice, they would come

back to serve with their fellow Soldiers again. At the same time, many of the experiences with seriously injured and dead Soldiers from their unit, including many close friends, is burned deep into their memory and is excruciatingly painful.

(22) After their tour, the applicant remained hypervigilant and had difficulty sleeping. The applicant left Iraq with a profound sense of loss and regret for the friends and fellow Soldiers who they could not help, and the applicant experienced constant flashbacks to what they saw and experienced during their tour, including the executed civilians, severely injured, dying, and dead Soldiers, black smoke rising over the neighborhood, and the smell of their friends' burnt flesh.

(23) When the applicant returned to Germany, they joined the Second Battalion, 28th Infantry Regiment, 172nd Brigade. They begin drinking heavily. They also used drugs on two occasions with other Soldiers. The applicant took pills that had been shared with them, not even knowing what was in them, in a desperate attempt to escape their traumatic memories, anger, and despair.

(24) The alcohol and drugs did not help with their symptoms, which led them to drunkenly urinate on headquarters and was ultimately discharged from service. They deeply regret their drinking and drug use. While their misconduct was limited to a two-month period and borne out of their desperation to escape the trauma from our tour, the applicant is ashamed of that behavior and the impact it had on their military career. They remain in contact with other Soldiers who continued their careers after their tour in Adhamiya, and the applicant truly wish they could have been able to do so, as well. If the applicant had the chance now, they know that they would not use alcohol and drugs to self-medicate. Instead, they would have sought the type of support that, they ultimately found at Veterans Affairs (VA), which has helped improve the symptoms of their PTSD.

(25) The applicant understand that there is a statement in their file suggesting that the applicant used drugs to exit the military. The applicant does not recall making any statement to that effect. As described above, when they returned from Iraq, they was deeply scarred by the horrible experiences and self-medicated to escape their pain, however they could. For them, drinking and the use of drugs was a form of escape and an attempt to deal with their intense emotional turmoil and the many losses the unit experienced, it was not a means to exit military service.

(26) After leaving service, they continued to struggle with PTSD including flashbacks, difficulty sleeping, irritability, and other issues for many years. They also self-medicated off and on for several years. Thankfully, the applicant was eventually able to get treatment with the VA and Queens Vet Center, and through hard work with doctors and counselors, their mental health has improved significantly. Since leaving the service, they have worked a number of jobs, including with an electrician's union and in mining.

(27) The applicant knows their attempts to self-medicate could not succeed, and their use of drugs and alcohol while serving in Germany was a serious mistake. They also recognize that at that time they were struggling to escape the symptoms of PTSD, for which they have been diagnosed by the VA and received a 70% disability rating. They deeply regret their having resorted to alcohol and drugs in Germany and they are disappointed and ashamed that they were not able to continue service alongside their friends and fellow service members. But they are proud of their service, particularly in Iraq, where they did their absolute best every day to try to help the civilians of Adhamiya

and their fellow Soldiers and faltered only after the tour when they were suffering from PTSD. For that reason, they respectfully request that the Board upgrade their discharge characterization to Honorable (Exhibit 1).

(28) Counsel states. For all of the foregoing reasons, the applicant's discharge should be upgraded to Honorable, their narrative reason for discharged changed to "Secretarial Authority", their separation code to "JFF," and their reentry eligibility code to "RE-1". Counsel's legal brief further details evidence of this case.

c. Board Type and Decision: In a telephonic personal appearance conducted on 8 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of illegal substance abuse and urinating on brigade headquarters. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 10 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 22 May 2008

c. Separation Facts:

(1) Date of Notification of Intent to Separate: Undated

(2) Basis for Separation: wrongful use of controlled substance and for urinating on Brigade Headquarters

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

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 May 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 June 2005 / 4 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Diploma / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10 Infantryman / 2 years, 10 months, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (5 August 2006 – 22 October 2007)

f. Awards and Decorations: ARCOM, AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR-2, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 28 June 2005, they enlisted in the Regular Army for 4 years, 16 weeks as a PVT. The Enlisted Record Brief provides they promoted up to SPC (28 June 2007), deployed to Iraq for 15 months (5 August 2006 – 22 October 2007), and was awarded both the Army Commendation and Achievement Medal, in addition to the Iraq Campaign Medal w/campaign star and Combat Infantry Badge. On 16 January and 31 March 2008, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA) (Exhibits 13, 14, 20).

(2) On 20 March 2008, the applicant accepted nonjudicial punishment, in violation of Article 112a, UCMJ, for having wrongfully used methylenedioxymethamphetamine (on or about 10 – 13 December 2007) and methamphetamine (on or about 6 – 9 January 2008). The punishment imposed included reduction to PVT; forfeiture of \$670.00 per month for two months, suspended, to be automatically remitted if not vacated before 19 September 2008; extra duty and restriction to the limits of the company area, barracks area, place of worship, dining, and medical facilities for 45 days.

(3) On 8 April 2008, the applicant completed their medical history for separation at Schweinfurt Health Clinic, Germany, which indicates the following:

(a) Their history, block 29 lists the following explanations of “yes” answers:

- 12n: Surgery on broken knuckles and dislocated bone and right hand (Leopoldina)
- 17g: ASAP treatment, symptoms of PTSD, alcohol, and drug dependency
- 17i: Tested pos for MDMA and Methamphetamines on 13 December [2007] and 9 January 2008
- 20: Treated in Leopoldina for surgery March 2008
- 21: Leopoldina for surgery
- 22: Yes, for right hand

(b) Their history, block 30a provides the examiner noted, “See medical records for all documentation.” (Exhibit 24)

(4) On 14 April 2008, the company commander recommend the applicant be released from military service and chaptered out of the Army, with an Honorable discharge. The applicant three years of military service have been marked with distinction, to include his 15-month deployment in support of Operation Iraqi Freedom (OIF). Following redeployment in the fall of 2007, they were diagnosed with PTSD and

began exhibiting emotional problems. They tested positive on a unit drug test in December 2007, and was referred to ASAP for alcohol and controlled-substance abuse. Since this incident the applicant has stopped drinking and their rehabilitation efforts are noticeable. The applicant admitted to using drugs twice, with the sole purpose of exiting the military. Their performance before and after their drug use, has been exceptional and they have remained out of trouble. The applicant continues to show motivation, coaches/teaches/mentors new Soldiers to increase their chances of survival in their future combat deployment(s). They have served their country honorably; however, the applicant currently does not possess the emotional stability to serve another tour. The emotional stresses from losing 13 of their fellow Soldiers within the Company (32 for the Task Force) could be detrimental, should like-events occur. It is their professional opinion as an Army leader of 17 years that it would benefit the Army, and the applicant's mental health, if they were released from their military service contract (Exhibit 2).

(5) On 5 May 2008, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), for wrongful use of MDMA and Methamphetamine (on or about 10 – 13 December 2007 and 6 – 9 January 2008); they recommended a General (Under Honorable Conditions) characterization of service. There is no evidence in the record or provided by the applicant, through counsel, indicating whether the applicant elected to speak with defense counsel or whether they elected to provide a statement (Exhibit 30).

(6) On 8 May 2008, the battalion commander concurred with the company commander's recommendation. The same day, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service (Exhibit 29).

(7) 14 May 2008, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 22 May 2008, with 3 years, 10 months, 12 days of total service. The applicant has not completed their first full term of service (Exhibit 6).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided:

(a) On 9 September 2007, the applicant provided, through counsel, their Post-Deployment Health Assessment, in which the applicant reported headaches, difficulty remembering, indicated having seen "coalition," "enemy," and "civilian[s]" wounded, killed, or dead, "engaged in direct combat where [they] discharged [their] weapon," and indicated having felt "that [they] w[as] in great danger of being killed," during their tour. The applicant reported having "experience that was so frightening, horrible, or upsetting that" [they] felt "numb or detached from others, activities, or [their] surroundings." There were no referrals indicated (Exhibit 22).

(b) On 15 April 2008, the applicant completed their separation mental status evaluation at SFT Mental Health Department, providing their behavior was normal; fully alert and oriented; with an unremarkable mood or affect; clear thinking process and normal thought content; good memory. The psychiatrist opined the applicant has the mental capacity to understand and participate in the proceedings, meets the retention

requirements of Chapter 3, AR 40-501; and further noted the applicant's drinking may be partly due to a mental health condition and will be enrolled in treatment. The applicant is psychiatrically cleared for administrative action (Exhibit 26).

(c) Through counsel, the applicant provided medical records indicating they were being seen at Queens Veteran Center and St Albans Harbor Healthcare System, NY, for chronic PTSD from November 2016 – November 2017. The applicant established care and the psychiatrist put the applicant on Citalopram Hydrobromide 20MG (Exhibit 23).

(d) On 7 April 2018, the Psychologist opined on a Disability Benefits Questionnaire, the claimed condition was at least as likely as not (50 percent or greater probability) incurred in or caused by the claimed in-service injury, event, or illness. Their rationale indicates the veteran was diagnosed with PTSD in the service and treated at the Vet Center for PTSD. [They] continued to report classic symptoms of PTSD. [The applicant] reported intrusive thoughts, nightmares, flashbacks, physiological and emotional repossess, sleep issues, isolation, anger issues, depression, panic, anxiety, multiple triggers, isolation, and issues with daily functioning. The veteran's medical records support that they veteran's diagnosed PTSD, is at least as likely as not (50 percent or greater probability) incurred in or caused by the PTSD, during service (Exhibit 33).

(e) On 23 August 2018, through counsel, the applicant provided a VA Rating Decision, indicating they have a service-connected disability with a 50% rating, effective 5 February 2018, for PTSD (Exhibits 35 and 37).

(f) On 8 September 2017, the applicant provided, through counsel, a letter from their Mental Health Counselor, Queens Veteran Center, NY, which provides the applicant has been in individual therapy since November 2016, with complaints of having nightmares, flashbacks, intrusive thoughts and feeling anxious, depressed and enraged all the time beginning in country. The applicant shares that they often engages in verbal and sometimes physical altercations with others. If they cannot engage the person physically, the applicant will punch things and inflict pain to themselves. Therefore, the applicant isolates and drinks to cope with their overwhelming feelings and negative thoughts, as well as avoid people in general. They use routines and familiarity to help them cope, as they have issues remembering and becomes anxious to the point of almost daily panic attacks; however, the applicant minimizes their symptoms at times, not to appear vulnerable. They also presents as flippant and sarcastic, again as defensive mechanism to hide their pain. They have a hard time being flexible and spontaneous. The applicant struggles to get things done, often feeling depressed and angry. Nevertheless, the applicant withdraws from others. Their nightmares and flashbacks leave them feeling tired, anxious, and irritable, making it hard to focus. They suffer with grief, continuous guilt, issues with authority over the many lost comrades, who died some because of poor leadership. The applicant has difficulty adapting and relating, as well as establishing and maintaining relationships, thus having few to no friends. Nonetheless, the applicant drinks and uses drugs to self-medicate, as well as is sexually promiscuous. These experiences left the applicant feeling vulnerable and helpless. They quickly found themselves enraged with the various near misses and causalities, noting that more than 40 were injured in their company and 14 were killed during their tour (Exhibit 31).

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Exhibits (1) Applicant's Declaration; (2) Duty Performance Memo; (3) Kurta Memo; (4) Carson Memo; (5) Hagel Memo; (6) DD Form 214; (7) Report of Medical Examination; (8) *Tell Me How This Ends*; (9) *They Fought For Each Other*; (10) Honor the Fallen (PFC E. M. K.); (11) Honor the Fallen (PFC E. A. A.); (12) Honor the Fallen (SGT J. L. M.); (13) Combat Infantryman Badge; (14) Army Commendation Medal; (15) Honor the Fall (PFC R. A. M.); (16) Honor the Fallen (PFC W. R. N.); (17) Honor the Fallen (PFC R. J. H.); (18) Honor the Fallen (PFC C. E. M.); (19) Honor the Fallen (PFC A. G. Jr.); (20) Enlisted Record Brief; (21) 1st Battalion, 26th Infantry Regiment (Blue Spaders) Lineage; (22) Post-Deployment Health Assessment; (23) Medical Records; (24) Report of Medical History; (25) Developmental Counseling Form; (26) Report of Medical History; (27) CDC Concept Code-Chronic PTSD; (28) Separation Authority Approval; (29) Battalion Commander's Separation Recommendation; (30) Company Commander's Initiating Separation Memo; (31) VA Behavioral Health Counselor's Letter; (32) ICD-9 Code Description PTSD; (33) Initial PTSD Disability Benefits Questionnaire; (34) WHO ICD Code Acute Stress, PTSD, Adjustment Disorder; (35) VA Rating Decision; (36) PsyD's Medical Opinion; (37) VA Rating Decision-PTSD (70%); (38) Treatment of Co-Occurring PTSD and Substance Use Disorder in VA; (39) PTSD Basics; (40) Common Reactions After Trauma; (41) Army Discharge Review Board Case Report and Directive (CRD) AR20200005397; (42) CRD AR20200003029; (43) CRD AR20200001438; (44) Honor the Fallen (SSG G. D. S.); (46) Honor the Fallen (PFC J. H. K.); (47) Developmental Counseling Form; (48) Garland Soldier's '07 Suicide in Iraq Remains PTSD Cautionary Tale; (49) Honor the Fallen (SGT W. M. M.); (50) Commander's Report

6. POST SERVICE ACCOMPLISHMENTS: The applicant continues to work hard on their mental health. After working in an electricians' union and other similar positions, they recently relocated to North Carolina, where they have begun a new career in mining.

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

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

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

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

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

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

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

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

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

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c, Misconduct (Serious Offense).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is 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 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. A review of the available records provides there were administrative irregularity in the proper retention of the official military records, specifically, the referral to ASAP [a two-part mandatory clinical assessment, required with the first positive urinalysis], a charge sheet, investigation report(s), and partial separation package.

(1) The available evidence provides the applicant enlisted in the Regular Army as a PVT, promoted up to SPC, deployed in support of Operations Iraqi Freedom for 15 months, and served 2 years, 6 months, and 18 days, without indiscipline. They were flagged, for having urinated on Headquarters Brigade building. They received nonjudicial punishment for their having wrongfully used a controlled substance twice (MDMA and Methamphetamine), which imposed a reduction to PVT. The applicant was

flagged for involuntary separation, under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) for the above actions, with a General (Under Honorable Conditions) characterization of service.

(2) They served 2 years, 10 months, and 25 days of their 4 year-16 week contractual obligation.

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

c. 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 presented 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 documentary evidence.

c. **Counsel / Witness(es) / Observer(s):** [REDACTED]

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: the applicant was diagnosed in-service with Depression and Bereavement. However, trauma symptoms were noted and the Chapter MSE posited behavioral health could have influenced the misconduct. Post-service, the applicant is service connected for combat related PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Depression and Bereavement. However, trauma symptoms were noted and the Chapter MSE posited behavioral health could have influenced the misconduct.

(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 and substance use, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of illegal substance abuse and urinating on brigade headquarters.

b. Response to Contention(s): The applicant, through counsel contends, for all of the foregoing reasons listed above in paragraph 2b, the discharge should be upgraded to Honorable, the narrative reason for discharged changed to "Secretarial Authority", their separation code to "JFF," and their reentry eligibility code to "RE-1". Counsel's legal brief further details evidence of this case.

(1) The Board considered the totality of the applicant's service record, including evidence, testimony, and argument submitted by the applicant and made during personal appearance. In addition, the Board liberally considered the applicant's behavioral health at the time of the misconduct and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of illegal substance abuse and urinating on brigade headquarters. The Board found that a discharge upgrade is warranted based on medical mitigation of the applicant's offenses.

(2) The applicant's characterization of service will change to Honorable.

(3) The narrative reason will change to Misconduct (Minor Infractions). After considering applicant's mitigated basis for separation, the Board found that a change to Secretarial Authority is not warranted as the applicant was involuntarily separated for misconduct, and the applicant's PTSD does not fully excuse the applicant's responsibility for the misconduct.

(4) The reentry eligibility code will remain at RE-3 given the applicant's behavioral health condition requiring medical evaluation prior to reentry.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of illegal substance abuse and urinating on brigade headquarters. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it. The applicant has exhausted appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the

applicant’s offenses of illegal substance abuse and urinating on brigade headquarters. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions). The Board found that a change to Secretarial Authority is not warranted as the applicant was involuntarily separated for misconduct, and the applicant’s behavioral health condition does not fully excuse the applicant’s responsibility for the misconduct. The SPD code associated with the new reason for discharge is JKN.

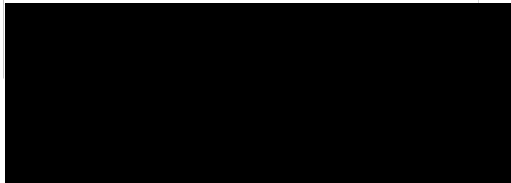
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

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

Authenticating Official:

4/26/2024



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