

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 5 July 2023**b. Date Received:** 13 July 2023**c. Counsel:** [REDACTED]  
[REDACTED]  
[REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is an under other than honorable conditions. The applicant requests a second reconsideration of an upgrade to honorable, change of their separation code, reentry code, a change of their narrative reason for separation to Secretarial Authority, and an appearance before the Board.

(2) The applicant, through counsel, seeks relief stating the applicant was discharged 1 year into their U.S. Army Reserve (USAR) mobilization and suffered greatly from Post-Traumatic Stress Disorder (PTSD). The Board did not address the applicant's youth and deployment stressors as a mitigating factor to their misconduct. The Board's medical examiner found that PTSD played a role in their misconduct and served as a mitigating factor. However, the Board did not accept this recommendation and provided no explanation for not applying liberal consideration. This request is made for reasons of propriety and equity.

(3) They received a permanent profile on 7 April 2010, prior to their deployment, which stated they did not meet retention standards and prevented their deployment. However, despite all the warnings and limitations, they were found clear to deploy. During their deployment their unit came under mortar fire, as frequent as three times a week. On multiple missions they had to call Explosive Ordnance Disposal to detonate suspected Improvised Explosive Devices. They became distraught when they lost their best friend to a Rocket Propelled Grenade. They started not caring about life and what happened to them. They didn't realize it at the time, but they were depressed and started making bad decisions. Their behavior became irrational and all they wanted to do was numb the pain. They started drinking and smoking spice. The Combat Stress Department told the applicant they had PTSD but couldn't diagnose them properly because of their denial. They were later charged with five different specifications of violating Article 92 (Failure to Obey Order or Regulation), Uniform Code of Military Justice (UCMJ). They were so depressed and suffering from anxiety that they wanted to do anything to get home to their family.

(4) With their mental health diagnoses, information provided by their treating providers, and the Department of Veterans Affairs (VA), the applicant respectfully requests the Board to correct the injustice of issuing them an Under Other Than Honorable Conditions characterization of service. They served 1 year on active duty and spent half of that time in a deployed status. While they were willing to accept a Chapter 10 discharge, they were unaware of the impact and simply was not in the right frame of mind to comprehend the consequences. In light of their documented PTSD, and the mandate to liberally grant requests for assistance in situations just like these, they respectfully request this Board upgrade their discharge in order to allow them to continue to seek help.

**b. Board Type and Decision:** In a telephonic hearing conducted on 15 April 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service, combat service, the applicant's PTSD and Unspecified Depressive Disorder (DO) diagnoses outweighing the applicant's gambling in a combat zone, wrongful use and selling alcohol, spice, and K2 in a combat zone. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. The Board determined due to the severity of applicant's BH conditions the reentry eligibility (RE) is proper and equitable.

### 3. DISCHARGE DETAILS:

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

**b. Date of Discharge:** 31 March 2011

#### **c. Separation Facts:**

**(1) Dates and Charges Preferred (DD Form 458, Charge Sheet):** 15 December 2010 the applicant was charged five Specifications in violation of Article 92 (Failure to Obey Order or Regulation), UCMJ, –

**(a)** Specification I – did, at or near Contingency Operating Base Adder, Iraq, on divers occasions between on or about 8 May 2010 and on or about 20 September 2010, violated a lawful general order, by wrongfully introducing, purchasing, using, and selling a substance with the intent of improper use to create an impaired state of mind.

**(b)** Specification II – did, at or near Contingency Operating Base Adder, Iraq, on divers occasions between on or about 8 May 2010 and on or about 20 September 2010, violated a lawful general order, by wrongfully possessing, introducing, purchasing, using, consuming and selling alcohol.

**(c)** Specification III – did, at or near Contingency Operating Base Adder, Iraq, on divers occasions between on or about 8 May 2010 and on or about 20 September 2010, violated a lawful general order, by wrongfully engaging in gambling.

**(e)** Specification IV – did, at or near Contingency Operating Base Adder, Iraq, on divers occasions between on or about 21 September 2010 and on or about 27 September 2010, violated a lawful general order, by wrongfully introducing, ordering, possessing, selling, and consuming "Spice" and a similar product "K2."

**(d)** Specification V – did, at or near Contingency Operating Base Adder, Iraq, on divers occasions between on or about 21 September 2010 and on or about 27 September 2010, violated a lawful general order, by wrongfully introducing, purchasing, using, consuming, and selling alcohol.

**(2) Legal Consultation Date:** 20 December 2010

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

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 31 December 2010 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 29 November 2007 / 8 years (U.S. Army Reserve (USAR))

**b. Age at Enlistment / Education / GT Score:** 17 / NIF / 99

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88M1O, Motor Transport Operator / 3 years, 4 months, 3 days.

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq, specific dates not in the file

**f. Awards and Decorations:** NDSM, GWTSM, ASR, AFSM-M

**g. Performance Ratings:** NA

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

**(1)** The 143rd Combat Support Command Sustainment Expeditionary Orders 09-314-00005, dated 10 November 2009, ordered the applicant to Active Duty as a member of their Reserve Component unit for a period of 400 days, with the purpose of Mobilization for Iraqi Freedom.

**(2)** The Headquarters, 143rd Combat Support Command Sustainment Expeditionary Orders 10-035-00014, dated 4 February 2010, reassigned the applicant to another USAR unit with the additional instructions, Soldier medically unqualified for deployment, return to original unit of assignment, effective 5 February 2010.

**(3)** A DA Form 3349 (Physical Profile) dated 7 April 2010, reflects the applicant's permanent profile for their penetrating injury, gunshot wound, right wrist with limited range of motion and residual numbness of thumb and index finger, with a rating of "3" which signifies the individual has a medical condition that may require significant limitations; and for vision deficit, with a rating of "2" which signifies the individual has some medical condition or physical defect that may require some activity limitations. In item 5 (Functional Activities for Permanent and Temporary Profiles) the profiling officer marked "NO" to –

- able to carry and fire individual assigned weapon
- able to construct an individual fighting position
- able to do 3-5 second rushes under direct and indirect fire
- is Soldier healthy without any medical conditions that prevents deployment

**(4)** Camp Atterbury Orders CA-125-0004, dated 5 May 2010, reflects the applicant is deployed in a Temporary Change of Station status, with purpose – Deployment will be in support of Operation Iraqi Freedom, Tallil, Iraq, and will proceed on or about 6 May 2010.

(5) A DA Form 4187 (Personnel Action) dated 23 October 2010, reflects the applicant's reduction in rank/grade from specialist/E-4 to private/E-1, due to summary court-martial processing. (Note: Summary Court-Martial Processing is not in evidence for review.)

(6) A DD Form 458 (Charge Sheet) dated 15 December 2010, reflects charges referred against the applicant described in previous paragraph 3c(1).

(7) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial – United States v. [Applicant], dated 20 December 2010, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They understand that they may request discharge in lieu of trial by court-martial because one or more of the charges preferred against them under Article 92, UCMJ, authorize the imposition of a bad conduct or dishonorable discharge. They are making this request of their own free will and have not been subjected to any coercion whatsoever by any person.

(a) Prior to completing this form, they have been afforded the opportunity to consult with an appointed defense counsel. They have been fully advised of the nature of their rights under the UCMJ. They understand that if their request for discharge is accepted, they may be discharged under other than honorable conditions and will be reduced to the lowest enlisted grade. They have been advised and understand the possible effects of an under other than honorable conditions discharge and that, as a result, they will be deprived of many or all Army benefits, that they may be ineligible for many or all benefits as a veteran under both Federal and State law. They also understand that they may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge.

(b) They elected to submit statement in their behalf stating, they know they have made mistakes since they have been in the Army, but they know that they have learned valuable lessons and want to be a contributing member of society. They currently have a 1 year child and a baby that is due in April; they want to be around to support their children. They feel that they have learned a lot from this incident, and they need to make sure that all of their actions conform to the Army values. If their Chapter 10 is granted, it is their goal to get into school and finish their degree. They want to be a productive and law-abiding member of society. The Army has taught them a lot about discipline, and they hope to be able to apply these lessons to their life in the civilian sector.

(8) A memorandum, Headquarters, 3rd Corps, Baghdad, Iraq, subject: Request for Discharge in Lieu of Trial by Courts-Martial, dated 31 December 2010, provides the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10, with a characterization of service of Under Other Than Honorable Conditions. The applicant will not be transferred to the Individual Ready Reserve, will be reduced to the grade of private/E-1, expeditiously redeployed from Iraqi Theater of Operations, returned to their home station, and immediately processed for separation from the Army.

(9) The applicant provided page 3 of their DA Form 2807-1 (Report of Medical History) dated 12 January 2011, reflects in item 30 (Examiner's Summary and Elaboration of all Pertinent Data) "Diagnosed PTSD by Combat Stress."

(10) The U.S. Army Human Resources Command Orders A-02-104172, dated 28 February 2011, reflects the applicant was retained on Active Duty for the purpose to participate in Reserve Component Warriors in Transition Medical Retention Processing Program completion of medical evaluation.

(11) The Headquarters, U.S. Army Signal Center of Excellence and Fort Gordon Order 090-0903, dated 31 March 2011, reassigned the applicant to the U.S. Army transition point for transition processing and discharge from the USAR, with a discharge date of 31 March 2011.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 31 March 2011. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 year, 1 day
- item 12i (Effective Date of Pay Grade) – 18 February 2010
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

(13) On 26 March 2021 the Army Discharge Review Board (ADRB) denied the applicant's request to upgrade their characterization of service from under other than honorable conditions to honorable, change of the narrative reason for separation to Secretarial Authority, and a change of their reentry code. The Board determined –

(a) The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. Their record documents no significant acts of achievement or valor and did not support the issuance of an honorable or a general discharge by the separation authority at the time of separation. The record does not contain any indication or evidence of arbitrary or capricious actions by the command and all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process.

(b) Regarding the applicant's contention of becoming more depressed and isolated; turning to alcohol to self-medicate, they had had many legitimate avenues through which to obtain assistance or relief, and there is not sufficient evidence in the record that they ever sought such assistance before committing the misconduct which led to the separation action under review.

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

(14) On 26 October 2021, the ADRB denied that applicant's reconsideration to change their characterization of service from under other than honorable conditions to honorable. The Board determined –

(a) The applicant's personal drug and alcohol use is mitigated as self-medicating for PTSD. However, even considering liberal guidance and the applicant's PTSD is not a mitigating factor for some of their misconduct (introduction and distribution of prohibited mind-altering substances) and the misconduct is not part of the sequela of symptoms associated with PTSD. Distribution and Introduction of prohibited substances can be seen as a conscious and will act, that the applicant committed over time, rather than manifestation of behavioral health disorder.

**(b)** Despite liberally considering all evidence, the Board concurred with the opinion of the Board's Medical Advisor, a voting member, that the applicant's drug distribution outweighed and therefore was not mitigated by the applicant's PTSD diagnosis. However, the personal drug and alcohol use that is mitigated by applicant's medical condition is also outweighed by that condition and therefore should not be considered as a basis for discharge.

**(c)** Despite applying liberal consideration, the board elected to not change the applicant's characterization of service because, the applicant's PTSD did not mitigate the offenses of introduction and selling of drugs and alcohol while on deployment. The applicant did not supply sufficient evidence to support certain contentions, and the discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

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

**(1) Applicant provided:**

- page 3, of DD Form 2807-1, reflecting the examiner's comment "Diagnosed PTSD by Combat Stress"
- Providence Residential & Outpatient PTSD Services Letter, reflecting a psychologist statement of the applicant's treatment for PTSD, Unspecified Depressive Disorder, Cannabis Abuse Disorder, Relationship Distress with Spouse or Intimated Partner
- Department of Veterans Affairs (VA) Review of PTSD Disability Benefits Questionnaire and Initial PTSD Disability Benefits Questionnaire, reflecting the applicant's behavioral health diagnoses

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Brief in Support of Application for Correction of Military Records, with 14 Exhibits, consisting of –
  - DA Form 3349 (Physical Profile)
  - page 3, of DD Form 2807-1
  - Hattiesburg Clinic, Department of Orthopedic Surgery Visit Summary
  - DD Form 214
  - Northeast Texas Treatment Center Certificate
  - Providence Residential & Outpatient PTSD Services Letter
  - VA Disability Benefits Questionnaires
  - four 3rd Party Character Statements

**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. Title 32, Code of Federal Regulations, Section 70.9 (Discharge Review Standards) provides the objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. Neither a Discharge Review Board nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the Discharge Review Board or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

d. 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.

e. Army Regulation Army Regulation 40-501 (Standards of Medical Fitness), dated 14 January 2008, governed medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 (Physical Profiling) prescribed a system for classifying individuals according to functional abilities. Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial is to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, will be evaluated in determining the numerical designation 1, 2, 3, or 4.

- an individual having a numerical designation of "1" under all factors is considered to possess a high level of medical fitness
- a physical profile designator of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations
- a profile serial containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations – the individual should receive assignments commensurate with his or her physical capability for military duty
- a profile serial containing one or more numerical designators of "4" indicates that the individual has one or more medical conditions or physical defects of such severity that performance of military duty must be drastically limited

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2009, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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



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

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

**(4)** Paragraph 1-33 (Disposition Through Medical Channels) stated, except in separation actions under chapter 10, disposition through medical channels takes precedence over administrative separation processing. Disability processing is inappropriate in separation actions under chapter 10.

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

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

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

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

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

**g.** Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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

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

**(2)** RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is 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.

**i.** Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 92 (Failure to Obey Order or Regulation).

**j.** Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

## **8. SUMMARY OF FACT(S):**

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated an understanding a under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 1 year and 1 day of their mobilization and 3 years, 4 months, 3 days of total service; however, they did not complete their contractual enlistment service obligation of 8 years in the USAR.

c. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment.

e. The applicant's AMHRR contains no documentation of a diagnosis of PTSD or other mental health conditions during the applicant's term of service. The applicant provided VA document reflecting a diagnosis of PTSD.

d. 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):** None

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

c. **Counsel / Witness(es) / Observer(s):** [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/experiences: PTSD and Unspecified Depressive DO.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant's civilian medical documentation indicates applicant's PTSD and Unspecified Depressive DO conditions were result of active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two BH conditions, PTSD and Unspecified Depressive DO, which mitigate some of applicant's misconduct. As there is an association between these conditions and self-medication, there is a nexus between these diagnoses and the applicant's offenses of using alcohol, Spice and K-2. These conditions do not mitigate the applicant's remaining misconduct of selling alcohol, K2 and Spice illegally in a combat zone. They also do not mitigate the offense of gambling in a combat zone. While there is partial mitigation of the applicant's offenses, in the writer's opinion, the degree of mitigation offered under liberal consideration is significantly outweighed by the totality of applicant's misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD and Unspecified Depressive DO outweighed the basis for applicant's separation – gambling in a combat zone, wrongfully selling alcohol, spice, and K2 in a combat zone.

**b. Response to Contention(s):**

(1) The applicant contends stating the previous Board did not address the applicant's youth and deployment stressors as a mitigating factor to their misconduct. The Board considered this contention and determined the applicant's youth and immaturity did not outweigh the seriousness of the applicant's gambling in a combat zone, wrongfully selling alcohol, spice, and K2 in a combat zone. However, the Board determined the applicant's length of service, combat service, the applicant's PTSD and Depressive DO diagnoses outweigh the applicant's gambling in a combat zone, wrongful use and selling alcohol, spice, and K2 in a combat zone.

(2) The applicant contends stating the previous Board's medical examiner found that PTSD played a role in their misconduct and served as a mitigating factor. However, the Board did not accept this recommendation and provided no explanation for not applying liberal consideration. The Board applied liberal consideration during proceedings and determined the applicant's length of service, combat service, the applicant's PTSD and Depressive DO diagnoses outweigh the applicant's gambling in a combat zone, wrongful use and selling alcohol, spice, and K2 in a combat zone. The Board voted to upgrade the applicant's characterization to General, Under Honorable Conditions. The Board found that the applicant's service, given the nature of the misconduct, including gambling in a combat zone and wrongfully selling alcohol, spice, and K2 in a combat zone, was not sufficiently meritorious to warrant an honorable discharge.

(3) The applicant contends stating while they were willing to accept a Chapter 10 discharge, they were unaware of the impact and simply was not in the right frame of mind to comprehend the consequences. The Board considered this contention and noted that this action is a procedural step which is part of a normal process, when an alternative forum is chosen. In this case, the charges were dismissed because the applicant requested to be discharged under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial and the convening authority approved that request. There was no evidence presented to the Board to convince the Board of any mitigating circumstances that would warrant a change to the narrative reason for discharge.

(4) The applicant contends in light of their documented PTSD, and the mandate to liberally grant requests for assistance in situations just like these, they respectfully request this Board upgrade their discharge in order to allow them to continue to seek help. The Board applied liberal consideration during proceedings and determined an upgrade the applicant's characterization to General, Under Honorable Conditions is warranted. The Board found that the applicant's service, given the nature of the misconduct, including gambling in a combat zone and wrongfully selling alcohol, spice, and K2 in a combat zone, was not sufficiently meritorious to warrant an honorable discharge.

c. The Board determined that the characterization of service was inequitable based on the applicant's length of service, combat service, the applicant's PTSD and Depressive DO diagnoses outweighing the applicant's gambling in a combat zone, wrongful use and selling alcohol, spice, and K2 in a combat zone. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. The Board determined due to the severity of applicant's BH conditions the reentry eligibility (RE) is proper and equitable. The applicant has exhausted their 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 General Under Honorable Conditions because the applicant's length of service, combat service, the applicant's PTSD and Depressive DO outweighed the applicant's misconduct of gambling in a combat zone, wrongful use and selling alcohol, spice, and K2 in a combat zone. Thus, the prior characterization is no longer appropriate.

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

(3) The RE code will not change due to the severity of applicant's BH conditions the reentry eligibility (RE) is proper and equitable.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

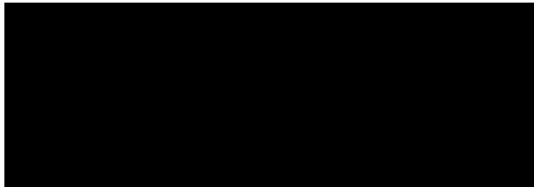
**AR20230010026**

**11. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

7/29/2024



AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs