

1. Applicant's Name: [REDACTED]**a. Application Date:** 12 July 2023**b. Date Received:** 18 July 2023**c. Counsel:** None**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); however, the characterization was upgraded to Honorable under a previous case with the Army Discharge Review Board (AR20200005126). The applicant requests changes be made to their narrative reason and their separation and reentry codes.

b. The applicant seeks relief contending, had they be given the opportunity to defend themselves, they would have never been separated. It is without a reasonable doubt that their leadership, forward and on rear detachment, did what they did to prevent them from proving their innocence, as well as their lies. The applicant provided a self-authored statement, as well as letters from their former leadership.

(1) The applicant contends, having lived through childhood abuse, witnessing death, poverty, and homelessness, they learned early on in life how easy it is to lose everything and how hard it is to get it back. It is especially different when you are black. While they did not speak on it, they only hinted by saying that it was "unfair." It is almost embarrassing to the applicant writing this, but after all of this time being out of the Army, they have learned so much about life, but most importantly, themselves. The applicant has learned, the way in which they spoke up for themselves needed to change and the due to the trauma they experienced, this caused them to be defensive. When they choose to join the Army to live out a dream and change their family's history, they were aware of their responsibilities they had not just for their family's reputation, but also for the Army. People warned the applicant that what was done to them, was done so because the applicant was black but they did not take the warnings serious. Most of their best Soldiers from the Army, would even comment on it, but they brushed it off.

(2) As a Christian, it is written to love thy neighbor, which applies to every living human being on this planet. Regardless of the hate the applicant experienced firsthand while being positive, they will not change how they live or love thy neighbor. By living The Word, they were cautious but did not change. The applicant had more to write but feel as if not much will help their case without the evidence, which they have not been able to reobtain. Without trying to make their accusers look bad, the applicant believes race was a factor. All parties against the applicant, used the same thing to say against the applicant, however not one sworn statement in support of their defense, to include their statement was never used. The investigating officer was the platoon leader in Apache Troop and to the applicant's knowledge, the 110 was supposed to be assigned to another Troop or Battalion.

(3) The applicant was hazed, treated differently because of their color. These experiences changed how they led and they refused to allow their Soldiers to feel like the applicant felt, which was to try to control them. The applicant refused to abuse their rank and take advantage of their power. 4/10 CAV has ruined many lives but most were black and brown. They are requesting their narrative reason, SPD and RE codes be

changed because leadership of 4/10 CAV and the legal team for 3rd Brigade, did not allow them to defend themselves. They knew that they was about to speak in front of a board or panel, yet that ability was taken away from the applicant by them. While being deployed, they kept the applicant in the TOC during JAG and trial defense services (TDS) hours, yet the applicant was never given the opportunity to go. The emotional strain they were under, caused them to have an emotional reaction, when the applicant broke down crying and emotionally punched a Connex and broke their right hand. This caused the applicant to be accused of pointing a knife at a SGM, yet no one was present. They never received Soldiers help because there were no witnesses to prove anything or to help their own case but a Senior NCO can get away with it.

(4) When CPT did the same thing, they could never get any help to prove that they were accusing them of being disrespectful to the applicant and telling them, if the applicant did not sign a counseling and memorandum preventing them from getting sworn statements for their defense, which is the situation SGM R. mentions in [their] memorandum, about [their] "lack of judgement." The applicant spoke to TDS on 3 October 2019 and provided witness statement and a self-authored statement; however, neither was used. Moreover, someone circled the box stating the applicant waived their right to seek legal counsel but their initials are not present.

(5) Every detail, staff duty, and CQ shift they could put the applicant on, they did it, which made it hard to go to JAG or TDS. The applicant attempted to get help from the Inspector General and was told that they should have just shut up when everything they was accused of was fake, everything was made up. Equal Opportunity representatives informed the applicant that racial slurs were not used so they were unable to help them. JAG told them to go to TDS and TDS told them to go to JAG. The applicant felt hopeless because no one wanted to help them and nothing was fair, not even their separation. They were never demoted because SGM and LTC stated that the investigation was one sided.

(6) To play it safe, the applicant took the summarized Article 15, thinking they would not be chaptered but in September 2019, they were notified of the pending separation. The applicant understands that without all of the evidence, they are claiming to have once had, really does not support their case, other than the applicant having lost so much from this, desperate to change this narrative away from their name and have their narrative reason, and both the SPD and RE codes changed to minor infractions and upgraded. They are very thankful for the board having previously changed their characterization to Honorable.

(7) They ask that the members of the board honor their request with liberal consideration. The separation code will allow them to serve in the National Guard if changed. The RE Code will open the door to allow them to wear the uniform again. The narrative being changed to minor infractions or something other than what they have, currently will allow federal jobs to consider them for employment.

c. Board Type and Decision: In a records review conducted on 15 April 2024, and by a 5-0 vote, the Board, based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighed the applicant's assaulting an NCO and disrespect toward NCOs basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the

characterization of service and RE code are proper and equitable and voted not to change them. The Board voted not to change the RE code due to the severity of the applicant's BH conditions.

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-4 / General (Under Honorable Conditions)

b. Date of Discharge: 16 January 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 24 September 2019

(2) Basis for Separation:

(a) Unlawfully struck SGT M. in the chest with their hands; verbally disrespected SSG C., by saying "B*****" and "I'll punch you in the mouth" or words to that effect; the applicant assaulted SGM, by pointing a knife and was disrespectful in language and deportment to SGM, by saying to [them] "stop following [them] or someone will get killed" or words to that effect and by punching an air conditioning unit and turning and walking away from [them]; disrespected SGT B., by saying "throw the gloves on" and "gloves or bare knuckles" or words to that effect.

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

(4) Legal Consultation Date: Waived on 17 October 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 2 December 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 February 2017 / 5 years (1st Reenlistment)

b. Age at Enlistment / Education / GT Score: 20 / High School Diploma / 102

c. Highest Grade Achieved / MOS / Total Service: E-5 / 19D20 Cavalry Scout / 4 years, 10 months, and 14 days

d. Prior Service / Characterizations:

- ARNG (20 May 2013 – 2 March 2015) / HON
- RA (3 March 2015 – 26 February 2017) / HON
Concurrent Service

e. Overseas Service / Combat Service:

- SEA / Kosovo (19 February – 15 November 2018)
- SWA / Kuwait (28 February – 21 June 2019)

f. Awards and Decorations: AAM, AGCM, NDSM, AFEM, GWOTEM, GWOTSM, NOPDR, ASR, OSR, NATOMDL, MQBE-C

g. Performance Ratings: SGT (1 November 2017 – 22 November 2018) / Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 27 February 2017, the applicant completed their first reenlistment for 5 years as a SPC, with 1 year, 9 months, and 13 days of prior service (Army National Guard).

(2) The Enlisted Record Brief provides the applicant promoted to SGT (1 November 2017), served nine months in Kosovo (19 February – 15 November 2018), and four months (28 February – 21 June 2019) in Kuwait in support of OIR (Operation Inherent Resolve). They have been awarded an Army Achievement Medal and Good Conduct Medal. On 2 October 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation.

(3) On 2 April 2019, the applicant was counseled by the platoon sergeant (PSG), for the events that took place when they met with the NCOs to see if there were any issues going on. The applicant responded with, "Yes and I do not care if it offends any of you." The applicant stated the leadership within the platoon was incompetent, uncaring, and mentioned Soldiers are being forgotten about and neglected. As the PSG would try to respond, the applicant kept raising their voice, not allowing them to explain some instances. The applicant became extremely disrespectful towards the PSG, calling them a "b****" and threatened them by saying "I'll punch you in your mouth make you look really stupid," which was later confirmed by fellow NCOs. The PSG ordered the applicant to leave and remove themselves multiple times, to which the applicant continued to be disrespectful, talking down to the rest of the NCOs which was not the first instance of the applicant having been disrespectful towards the NCOs within the troop, and has been previously counseled. The applicant was reminded of the requirement to work together and of their having been previously transferred to overcome patterns of misconduct and informed their attitude was unbecoming and will not be tolerated. They no longer believed the applicant was capable of fulfilling their responsibilities as a section leader within the platoon and was recommending them for UCMJ actions.

(a) The applicant disagreed with the above information and noted the following remarks: "I [the applicant], disagree with the key points of discussion reason being, the counselor [illegible] the counseling statement playing as victim. I have never been verbally counseled for being disrespectful to NCOs in the troop. I [would] like to follow up with the troop 1SG and possibly go up to the SQBN, BDE and [illegible] division level to prove [themselves]."

(b) A total of twelve statements were in the record. Seven Sworn Statements concerning the occurrence on 1 April, SGT B. the PSG gathered the NCOs to check in. The applicant was hostile and verbally attacked all the NCOs by calling them horrible leaders for giving up on their Soldiers, continuing to address their invalid point, while

drastically increasing their aggression. PSG was quick to attempt to mitigate the problem, telling the applicant to calm down and talk professionally about their concerns; however, at this point, the applicant began to yell, "F*** it, Fire me" along with "F*** you and 1SG" to the PSG. The PSG directed the applicant to leave but the applicant stayed and continued arguing. After they were directed again by the PSG, the applicant aggressively stepped towards them, saying, "Should hit you in the mouth and make you look like a little b****." At that point the PSG told the applicant to leave, in which the applicant left. Six others (four SGTs, SSG and 1LT) give eyewitness statements of what happened this day, providing the same details.

(c) 2LT provided a statement indicating on 19 March, there was an altercation between peers, explaining as their 21 crew nearly completed their last table (ten minutes left), the applicant, their gunner (SPC S.) and their IO (SGT McC) entered at around 2050, loud and intentionally disruptive until, one of them leaned or pushed on the door, which disabled the gun, interfering with their engagement and effecting their crew's score. SGT Mcl. and 2LT said to get off of the door and after reviewing their scores, SGT Mcl. calmly asked to speak to the applicant outside, in which the applicant asked why, and SGT Mcl. said they wanted to discuss what happened because it was not warranted or acceptable. The applicant escalated the situation saying if they were to go outside, SGT Mcl. would get hit and SGT Mcl. stated they would go outside and have a discussion between two SGTs at more than arm's length. The applicant stated they were not going and at the time, it seemed like something three SGTs could diffuse amongst themselves, because the 2LT knows their NCO (SGT Mcl.) is levelheaded, avoids physical altercations at all costs, and is better at intellectual confrontation. 2LT did not think it would come to blows on that night but the applicant's behavior was unacceptable and may escalate in the future, as the two already had a precedence of clashing. 2LT thought it could be solved at the NCO level, along with a counseling, and had the applicant's PSG notified. If to do it over again, the 2LT would have taken a more active role, although, they did not want to take power away from their NCO, who is usually more than capable of solving problems. SGT Mcl., additionally provided a statement coinciding with the above statement, and additionally, explained how the applicant pushed them into their seat.

(d) Two other statements provides the applicant attempted to get SGT B. to put the gloves on and get in the ring with the applicant, after calling the whole section together at the ring.

(e) On 22 April 2019, the troop commander counseled the applicant on their having conducted themselves in an unprofessional manner and after the commander's inquiry to determine all of the facts surrounding the applicant's case. The findings indicated the applicant attempted to fight fellow NCOs on three separate occasions and on one such occasion, physically assaulted another NCO. Additionally, they displayed grossly disrespectful behavior to their PSG. Upon coming to the unit, they were told they would have a clean slate to start over; however, it does not look as if the applicant has taken advantage of this opportunity. The applicant not being able to control their temper was detrimental to the unit's morale, cohesion, and discipline. The commander recommended UCMJ action and advised they would be flagged. The applicant disagreed with the above information; however, did not provide a statement on their behalf.

(4) SGM P provided a statement indicating on 7 June 2019, the applicant approached them outside the Squadron TOC and asked if they could speak with the SCO and the SGM told the applicant the SCO was not in their office. The applicant

previously requested to speak to the SCO the day before (6 June) after lunch, to discuss their current situation. SGM told the applicant to see if the SCO was in their office and ask but a few seconds later, the applicant told them the SCO was not around. SGM advised the applicant to wait around the TOC, as the SCO would return, and went about their day, and did not see the applicant for the rest of the day. This morning SGM was under the impression that the applicant spoke with the SCO, however, that was not the case.

(a) Based on SGM's confusion, they asked the applicant about the talk yesterday. The applicant angrily told them that they did not see the SCO due to the applicant going back to their room and did not remain and wait for their return. SGM told the applicant that they should not be angry with the SCO for not being there since they were at a Troop discussion forum. SGM told the applicant they should have stayed yesterday because the SCO was available all afternoon as the applicant must have just missed them. The applicant's demeanor drastically changed and raised their voice and said multiple times, that no one listens to them, and when they are gone, everyone will see what happens. SGM told the applicant to stop walking away and to tell them what was going on. The applicant replied with "everyone is always against me." The applicant started to walk away quickly. As SGM followed the applicant at this point, they were concerned with their agitated state, as the applicant said multiples times, "I do not want to be here and I will hurt somebody."

(b) The applicant stopped just short of the front of the TOC building and quickly turnaround, ran, and struck a large AC unit outside, with their right hand. SGM had to jump out of their way, due to the limited space available. The applicant quickly walked back to the front where they stopped and slammed their hand against a green container. The applicant also threw their hat and eyepro, shattering their glasses. SGM became more concerned for the applicant's mental and physical state. SGM noticed a large dent on the AC unit as they turned and watched the applicant walking away. SGM walked behind the applicant continuing to tell them to stop so they could talk things out. At times when the applicant became close enough to hear them, the applicant said, "I am killing myself because everyone is against me, I cannot trust anyone". The applicant reached into their left pants pocket and pull out a knife, which really escalated the situation.

(c) SGM started to call and text other people so to have more personnel and resources available to assist. Multiple times, the applicant attempted to enter a porta potty but SGM did not allow the applicant to close and lock the door. SGM told the applicant they would not allow the applicant to hurt themselves. While inside the porta potty, the applicant turned their back to SGM, and using the knife in their right hand, attempted to slash their left wrist, multiple times (but as SGM thinks now, it was over the applicant's OCP coat and not directly on their wrist). Immediately, SGM reacted by forcefully pushing their arm away as to stop the applicant and they turned towards SGM with the knife in hand and said, "to stop following [them] or someone would get killed." SGM stepped back from the door and off the metal steps, and told the applicant, "I am not leaving your side because we can work this out."

(d) The applicant exited the porta potty with the knife in their right hand towards SGM and repeated the statement to "stop following me or someone with get killed." SGM kept their distance as the applicant had the knife pointing at them. As SGM continue to follow, the applicant switched the knife from their right to their left hand, and brought their right hand closer to their face, as to assess how they were hurt, after having struck the AC unit. SGM was coordinating with medical, 1SG, and the NCOIC, in which medical had notified the Military Police. The applicant ran to a latrine grouping

with hard doors and as the applicant attempted to lock the doors, SGM grab the door and would not allow the applicant to lock it. The applicant proceeded to lock themselves in a stall. The applicant was in the process of taking off their boots and OCP top when SGM asked SFC to keep an eye on the applicant, while SGM helped the MPs get their location. The Chaplain was fortunately walking by, when SGM asked for their help and the Chaplain assisted greatly, by getting the applicant to open the door and give up the knife. The MPs showed up with the aid of SFC F. and was able to have the applicant walk out and into the MP vehicle and transported to TMC to be treated.

(5) On 17 July 2019, the applicant accepted nonjudicial punishment for the following UCMJ violations. The punishment imposed consisted of forfeiture of \$701.00 pay and extra duty for 30 days. They did not appeal.

(a) Four specifications of Article 91: On 17 June 2019, they assaulted a superior noncommissioned officer, by pointing a knife at SGM and was disrespectful in language and deportment, by saying to [SGM], “to stop following [the applicant] or someone will get killed” or words to that effect, punched an air conditioning unit and turned and walked away from SGM;

- On 1 April 2019, they was disrespectful in language toward SSG, a superior noncommissioned officer, by saying to [SSG], “B****” and “I’ll punch you in the mouth,” or words to that effect;
- On 3 April 2019, the applicant was disrespectful in language toward SGT, a noncommissioned officer, by saying to [SGT], “throw the gloves on” and “gloves or bare knuckles” or words to that effect;

(b) Article 128: On 22 March 2019, the applicant, unlawfully struck SGT M. on the chest with [the applicant’s] hands.

(6) On 26 July 2019, the applicant completed their mental status evaluation at Fort Carson Embedded Behavioral Health, CO, which provides there was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The Soldier was psychologically cleared for any administrative action deemed appropriate by the separation authority; no follow-up needed.

(7) On 9 August 2019, they completed their medical history and examination at DiRaimondo Family Medicine, Fort Carson, CO, which indicates the following:

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

- 12c: annular tear and bulging discs in my T-7 and T-8
- 12g: boxers’ fracture
- 12k: cast on right hand for boxers’ fracture
- 12n: broken hand
- 17e: anger management
- 17g: PTSD
- 20: broken hand on deployment
- 21: broken hand in Kuwait, June 2019, doctor name [they] cannot remember
- 22: broken hand June 2019; wisdom teeth all four December 2017

(b) Their history, block 30a provides the examiner's notes:

- 12c: History of back pain since 2016; history of diagnosis T7-T8 central disc protrusion with possible annular tear per MRI T-Spine (February 2019); Improved, currently w/rest, less mobility
- 12g: [illegible] boxers' fracture – right hand (June 2019); continued on [illegible], fractured with cast
- 12k, n: while deployed in Kuwait; managed by either – significantly improved now (released from ortho care)
- 14: currently in good health
- 17e, g: Seen by BH prior for irritability and anger (related to employment); Also reported SI/HI while deployed in Kuwait (2019) – Medevac'd back completed psych hospitalization in Landstuhl on current BH temp profile; not on current psych medication; denies current SI/HI today
- 20 / 21 / 22: See above; Denies need for further BH care at this time; outpatient wisdom teeth removal – December 2017; Season allergies

(c) On 15 August 2019, the applicant was seen for their medical examination and determined to be qualified for service. The provider indicated they reviewed lipid panel, advised a low cholesterol diet and exercise, and to repeat lipid panel in 1 year for monitoring.

(8) On 24 September 2019, the company commander notified the applicant of their intent to initiate separation proceedings of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) and recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of the separation notice. The commander further noted on their report, "This Soldier has shown that further service in US Army is not in [their] best interest, nor the interest of the US Army. [They have] not take[n] responsibility for [their] actions and continues to show a pattern of behavior not aligned with the Army Values."

(a) On 17 October 2019, they elected to waive their right to defense counsel and elected to submit a statement on their behalf, in which the applicant provides, this stems from basic combat training when they were assigned to D-TRP, 3-61 CAV. They went to JRTC the fall of 2017 and during that training event everything was fine until the ENDEX. The environment around the applicant begin to change and they soon found out their Soldier accused them of physically assaulting them during their last training operation.

(b) Upon their arrival to Fort Carson, the applicant was informed of the accusations and the beginning of the investigation. The 110 spoke to everyone in their platoon and finished the investigation before they could seek counsel. The applicant was required to go to night court with their squadron commander (LTC) at the time, who read the applicant a letter of concern and the commander stated they believed the applicant did what they were accused of, even though there was no physical evidence and none of the stories matched up.

(c) Their unit was deployed from February – November 2018 and their last weeks in country, the applicant was picked to go to a noncommissioned officer (NCO) induction ceremony for newly promoted E-5s. Once it ended, they were detained by Military Police and interrogated as if they had just committed a serious offense. The

applicant was eventually informed that a bottle of alcohol was found in their room and their fingerprints were taken and again, they were under investigation. The applicant was suspended from their team leader position and received an order to have no contact with their former platoon. The investigation was over before returning home, although, the applicant found out the following month.

(d) The applicant was given a local letter of reprimand by their Squadron Commander. There was no proof of the bottle belonging to them and the applicant was given a memorandum stating they did not violate what they were accused of. The Squadron Commander did not believe them and requested the applicant be transferred to another brigade. They decided BABCT was a good choice, though they were deploying and the applicant was not given their dwell time.

(e) In February 2019, the applicant in-processed to 4-10 CAV where they were assigned to Apache Troop. Their first day began with the training room NCOIC, who began cursing at them, "Who the f*** are you?", "Why the f*** are you here?" The applicant answered both questions and was then told to go to S1 to finish some paperwork. Once they came back to the training room, SGT M., again started to disrespect the applicant in front of troop leadership and no one from the PSGs, LTs, XO, CO, 1SG or peer NCOs, said anything.

(f) Nothing happened from there, no investigation, no sworn statements on anything. The applicant was assigned as the B-Section [illegible] clue to NCO performance levels. Everything was okay from stateside to Kuwait. They began to do BDTs training in March. Once their crew's scheduled time arrived, they were told to go inside and stand by. SGT M. was in charge of 21E Morris crew at the time and they began to have turret problems and tried to accuse the applicant's crew of interfering. As they restarted, SGT began to yell at one of the applicant's gunners and told them to do pushups, in which the applicant, told SGT their Soldier did nothing wrong and if they did, the applicant would take care of it.

(g) The applicant told SGT the SPC worked for them and they would fix any deficiencies, not the SGT, which did not go over well, and the SGT threw their head set off and yelled, "He didn't give a f*** and then got in the applicant's face. The applicant asked them three times to get out of the applicant's face and when they tried to move, they continued to stay in front of them. The applicant pushed the SGT with their left arm and they calmed down and began to say the applicant was not being professional and it did not have to get to that. SGT contacted the applicant's PSG before the applicant could and told the PSG that the applicant was bothering 2LT.

(h) The applicant felt as if their PSG was siding with SGT because of their responses when the applicant asked to talk to 1SG. The next day at the motor pool, their PSG asked for the applicant's side of the story, in which the applicant and their crew told them what happened, and PSG told them to stay away from SGT, as everyone knows that is how they are.

(i) SGT B., SSG C., and SGM P., were fuel to the fire. SSG asked their platoons NCOs what the problem was and once the applicant began to give their [illegible], SSG told the applicant to, "shut the f*** up, because [the applicant] didn't know what [they were] talking about." The applicant admits they were wrong for yelling back at them and knew there were consequences that followed but their outburst came after the applicant was disrespected.

(j) SGT B. was talking to the lower enlisted about how they would beat them up and once the applicant caught wind of it, they asked to speak to everyone in their section. The applicant believed SGT B. did not like that and they ran to the TOC and told their 1SG that the applicant was trying to beat them up. And once the applicant was fired from that position the day of, they were pulled into CSM S. and read the applicant their rights for their first Article 15.

(k) SGM P. was a loose cannon and yes, the applicant can own up to their deficiencies, wrongdoings and so on, but what the SGM did could have been prevented. SGM became mad because the applicant asked to speak to the SCO; while the applicant was trying to explain to SGM on why they were unable to make it the day prior, SGM begin to yell at the applicant. The applicant gave their answer and told them that they had to get back to work. SGM begin to follow the applicant and asked them not to leave because of how angry the applicant was. The applicant was trying to calm down and SGM said something to the applicant and they punched a generator. SGM continued to follow them and the applicant punched a Connex and broke their hand.

(l) The applicant informed SGM that their hand was broken and that they were going to walk to the TMC. SGM said no and continued to follow them. SGM asked where the applicant was going, in which the applicant said, "to pee" and walked in a urinal and SGM opened the door. SGM continued to do that and as the applicant continued to walk, SGM began to tell people to grab the applicant. The applicant would tell them that they are not involved and do not know what is going on, and not to touch the applicant. SGM asked two more people and the applicant said that no one better not touch them because the applicant's hand was broken and if they tried to touch them, the applicant would hurt someone. At that point, the applicant felt threatened. The applicant finally came to a hard stand urinal, where it had actual locks. SGM was telling people to kick the door down, and again, the applicant said if anyone touches them, someone was going to get hurt. SFC came in at this point.

(m) SFC spoke to the applicant for about five minutes and the applicant told them what happened and the applicant was about to come out. SFC asked if the applicant had a knife and the applicant said yes, in which SFC took it from the applicant, due to the scene caused by SGM. SGM lied on the applicant's name because the applicant had broken their right hand, SGM said that the applicant was trying to stab them. Yes, the applicant made threats but not what SGM said. The applicant was unable to use their right hand due to the amount of damage.

(n) The applicant can acknowledge their faults and wish those accusing the applicant, could admit to their part and faults. In doing so, this situation would not be where it is now. The applicant desires to continue their Honorable service, though many may think it is not, they are all wrong. If the applicant is removed from service, they will more than likely be homeless. The applicant would have rather defended themselves in person, rather than on paper. The applicant stated that if they are chaptered that would be the wrong answer and no one actually reviewed their situation, if so, many would have seen the lies.

(9) On 24 October 2019, the brigade commander concurred with the company commander's recommendation. On 2 December 2019, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 16 January 2020, with 6 years, 7 months, and 27 days of total service and have completed their first full term of service.

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

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

(1) **Applicant provided:** On 19 May 2022, the applicant provided a printout, of their Veterans Affairs (VA) Health Summary (Continuity of Care Document), which provides they were diagnosed with, in effect, Posttraumatic Stress Disorder (PTSD); recurrent Major Depressive episodes, severe, with psychosis; history of Traumatic Brain Injury (TBI). Their TBI is described as mild, likely on three plus occasions, including deployment related episodes, the applicant experienced very brief loss of consciousness (LOC), at least once in 2018.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Self-Authored Statement; Veterans Affairs (VA) Health Summary (Continuity of Care Document); Partial Separation Package; DD Form 214 (Certificate of Release or Discharge from Active Duty); Enlisted Record Brief (ERB); Automated DA Form 3645 (Clothing Record) Two Character Letters provides the following:

a. On 21 October 2020, the applicant's PSG contends they supervised the applicant for three years and under their supervision, the applicant served as a heavy weapons gunner, dismounted scout, platoon communications representative, platoon maintenance representative, and team leader. The PS also sponsored the applicant to their promotion board. The applicant's duties during a normal work week included: supervising maintenance on the trucks in their section, assisting in the maintenance and training on the platoon heavy weapons/communications equipment, teaching a minimum of one class a week from the scout handbook, and as a team leader the safety, welfare, counseling, physical fitness, and training of their Soldiers.

(1) Upon meeting the applicant, they were just like every other Soldier, needing guidance. The only exception was that the applicant was one of the few that wanted a career in the military and was hungry for knowledge. They were eager to learn and train even if that meant going out with SSG alone for an observation post at night, with a blizzard incoming. The applicant was always ready and willing to follow orders given by any of the leadership in the Troop, with no pushback or bad attitude, instead they were one of the few that was willing to help everyone regardless of which platoon they were in. As the senior Specialist in the platoon, the applicant worked well with the other Soldiers and was never shy to make on the spot corrections when needed. The applicant adopted a leadership style like SSG's style, in which standards and discipline was a must, with intense training. However, the applicant was able to adapt a more modern approach when dealing with Soldiers, training, or discipline, while keeping a commanding presence. The applicant was and still is considered to be one of the best Soldiers they have had the privilege to lead and their only regret, was they was not able to lead them into combat, as they have no doubt the applicant would have exceeded their expectations.

(2) SSG is aware of the applicant attempting to enlist in the military once again. They believe this is in their best interest, to be allowed to serve again and SSG has no

doubt that the applicant will exceed expectations. It is their understanding that the applicant has had issues during their past enlistment and SSG believes they were treated unfair. Many times, they have witnessed great Soldiers make a mistake and are punished harsher than others who do the same. They have also seen Soldiers who do worse and end up with a slap on the wrist. SSG was one of these Soldiers who made a mistake and was punished harshly for it; however, if it were not for some great leadership, the applicant would not be where they are today. I believe that this is what the applicant needed but did not have it then but has been able to grow from their past.

b. On 30 November 2020, SGM R. contends, they were the applicant's rear-detachment Sergeant Major from June – December 2019, where the applicant served in 4-10 Calvary rear-detachment in support of the BDEs deployment to Operation Spartan Shield. The applicant arrived at the brigade rear-detachment and immediately received non-judicial punishment for actions that happened, while the applicant was deployed in support of Operation Spartan Shield. The Commander that administered the Article 15 reading was lenient on the punishment, as we both felt the senior leader involved could have defused the situation before it had escalated any further. Following their punishment, the applicant initially worked well with Squadrons leadership, but problems did develop between them and the Squadron's rear-detachment commander. The applicant displayed a lack of judgment and professionalism towards the Commander and was moved to the BDE S3 shop where they transitioned well working with several senior NCOs.

(1) Their performance was satisfactory; their contributions to the BDEs redeployment operations for 3,700 Soldiers and improving systems in the brigade S3 shop, directly contributed to the overall brigade's redeployment success. The applicant is a natural leader but needs development and leaders that will take the time to mentor them. They are hardworking and physically fit and seems to respond well to NCOs and Officers in which they respect; however, is challenged with following leaders in which, they do not. While SGM has observed the applicant, they have demonstrated the potential to excel in the NCO Corps but, needs development, self-discipline and to live by the Army values.

(2) SGM assessed the applicant's character at work as an NCO who has natural leader attributes but, at times struggled with leading by example, and living the Army Values. The applicant took full responsibility for all of their actions, and with development, has the potential to excel in the Army, as long as the applicant continues to learn, have self-discipline, and do what is right. The applicant demonstrated their leadership, in the way they cared about the Soldiers that were placed under them and was not afraid to stand up, for what they believed was right. SGM believed the applicant was an NCO worth retaining in the Army or should be given an upgraded discharge. Given the opportunity the applicant will lead Soldiers with honor throughout the applicant's career and SGM would serve with them again.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this application.

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

a. The applicant requests changes be made to their narrative reason, and the separation and reentry codes. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant completed their first reenlistment as a SPC, promoted to SGT, deployed for thirteen months in Kosovo and Kuwait, and served for 2 years, 7 months, and 5 days, prior to their having been flagged for involuntary separation.

(1) The applicant was charged for unlawfully striking SGT M. in the chest with their hands; verbally disrespected SSG C., by saying "B****" and "I'll punch you in the mouth" or words to that effect; the applicant assaulted SGM, by pointing a knife and was

disrespectful in language and deportment to SGM, by saying to [them] “stop following [them] or someone will get killed” or words to that effect and by punching an air conditioning unit and turning and walking away from [them]; disrespected SGT B., by saying “throw the gloves on” and “gloves or bare knuckles.” Their imposed punishment consisted of forfeiture of pay and extra duty for 30 days. As a result, they were processed for separation IAW AT 635-200, Chapter 14-12c, Misconduct (Serious Offense) and discharged with a General (Under Honorable Conditions) characterization of service.

(2) The applicant completed both a medical and mental status evaluation and was qualified for service and separation, listing no diagnoses, with the provider indicating they reviewed the applicant’s lipid panel, advised a low cholesterol diet and exercise, and to repeat lipid panel in 1 year for monitoring. Additionally, the applicant provided a printout, of their Veterans Affairs (VA) Health Summary (Continuity of Care Document), which provides they were diagnosed with, in effect, Posttraumatic Stress Disorder (PTSD); recurrent Major Depressive episodes, severe, with psychosis; history of Traumatic Brain Injury (TBI). Their TBI is described as mild, likely on three plus occasions, including deployment related episodes, the applicant experienced very brief loss of consciousness (LOC), at least once.

(3) They served 2 years, 10 months, and 19 days of their 5 year contractual obligation.

c. 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.

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 provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

c. **Counsel / Witness(es) / Observer(s):** None.

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: Major Depressive DO (MDD); PTSD (50%Service Connected).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found MDD was diagnosed while in the military. VA service connection for PTSD establishes it began in the military.

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.** The Board's Medical Advisor applied liberal consideration and opined that based on the available information, is the opinion of the Agency BH advisor that the applicant's RE code should remain the same given applicant's military BH history, applicant history of TBI and applicant's VA 50% service connection for PTSD. The applicant's currently has an Honorable discharge.

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

b. Response to Contention(s):

(1) The applicant seeks relief contending, had they be given the opportunity to defend themselves, they would have never been separated. The Board considered this contention but determined there is insufficient evidence in the applicant's file to support this contention as there is not a way to prove the applicant would not have been separated. The applicant does not have a BH condition or experience that mitigates or outweighs the discharge, however the Board voted to change the narrative reason for discharge based on the applicant's PTSD diagnosis outweighing the applicant's assault to an NCO and disrespect toward NCOs basis for separation.

(2) The applicant contends they were hazed, treated differently because of their color. The Board considered this contention and determined the information in the applicant's file does not support the applicant was hazed or treated differently because of their color. Ultimately, the Board voted to change the applicant's narrative reason for discharge to Misconduct (Minor Infractions) based on the applicant's PTSD diagnosis outweighing the applicant's assault to an NCO and disrespect toward NCOs basis for separation.

(3) The applicant contends they spoke to TDS (3 October 2019) and provided witness statement and a self-authored statement; however, neither was used. Moreover, someone circled the box stating the applicant waived their right to seek legal counsel, but their initials are not present. The Board considered this contention and determined the there is insufficient evidence to support that someone else circled the applicant's choice to waive their right to legal counsel, however the Board voted to change the applicant's narrative reason for discharge to Misconduct (Minor Infractions) based on the applicant's PTSD diagnosis outweighing the applicant's assault to an NCO and disrespect toward NCOs basis for separation.

(4) The applicant contends, liberal consideration in changing their separation code, will allow them to serve in the National Guard if changed. The RE Code will open the door to allow them to wear the uniform again. The Board considered this contention and determined the applicant's RE code is appropriate and does not warrant a change based on the applicant's BH history.

(5) The applicant contends the narrative reason being changed to minor infractions or something other than what they have, currently will allow federal jobs to consider them for employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities. Ultimately the Board voted to change the narrative reason based on the applicant's PTSD diagnosis outweighing the applicant's assault to an NCO and disrespect toward NCOs basis for separation.

c. The Board determined, based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighed the applicant's assaulting an NCO and disrespect toward NCOs basis for separation, the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and RE code are proper and equitable and voted not to change them. The Board voted not to change the RE code due to the severity of the applicant's BH conditions. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable; therefore, no further relief is available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

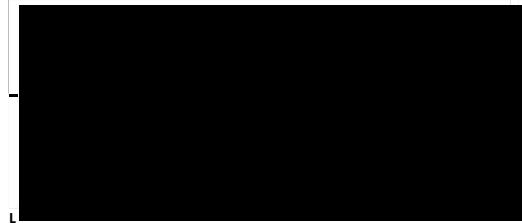
(3) The RE code will not change, due to severity of applicant's BH history.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

7/25/2024



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