

1. Applicant's Name:

- a. **Application Date:** 15 June 2023
- b. **Date Received:** 22 June 2023
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions) Under. The applicant requests reconsideration for a change to honorable, a change of the narrative reason for separation, and an appearance before the Board.

(2) The applicant, through counsel, seek relief in the interest of propriety, equity, and clemency. Due to a lack of adequate and timely care of severe lower back injuries and ensuing mental health problems, including Post-Traumatic Stress Disorder (PTSD) and depression during their military service; their general (under honorable conditions) characterization of service was erroneous. The applicant relies on multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018, that advances in the treatment of mental health have revealed that there is a correlation between PTSD and misconduct.

(3) The separation authority did not consider behavioral health problems as Army providers failed to properly diagnose the applicant's pre-existing back injury, aggravating military injuries and the resulting mental health issues.

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 15 April 2024, and by a 4-1 vote, the Board denied the request upon finding the separation was both proper and equitable. Please see Section 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 14 February 2019

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** on or before the applicant's Acknowledgment of Receipt of Separation Notice dated 17 September 2018.

(2) **Basis for Separation:** on 31 March 2018, operated a motor vehicle while drunk.

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

(4) **Legal Consultation Date:** 7 November 2018

(5) Administrative Elimination Board: NA

(6) Separation Decision Date / Characterization: 30 January 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 May 2016 / 3 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 110

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B1O, Infantryman / 2 years, 8 months, 28 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ASR; The applicant's Army Military Human Resource Record (AMHRR) reflects award of the NDSM; however, the award is not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 3822 (Report of Mental Status Evaluation), 8 March 2018, reflects the applicant has no duty limitations due to behavioral health reasons, currently meets medical retention standards, and is cleared for administrative action. The behavioral health provider noted no behavioral health diagnoses. The behavioral health provider states there is no evidence of any emotional instability, difficulties or stressors that would impede the applicant's ability to fulfill their military duties. The applicant denied history of symptoms of PTSD, mild traumatic brain injury, or history of sexual abuse. The applicant is cleared for administrative action as deemed appropriate by Command to include separation.

(2) A DD Form 2807-1 (Report of Medical History) dated 27 March 2018, reflects the applicant marked "Yes" to "Have you ever had or do you now have" for ear, nose, or throat trouble; worn contact lenses or glasses; recurrent back pain or any back problem; numbness or tingling. The applicant marked "No" to behavioral health conditions. The examiner commented the applicant is currently engaged with pain management at this time for continued lower back pain.

(3) A DD Form 2808 (Report of Medical Examination) dated 27 March 2018, reflects the applicant is qualified for service. Item 74b (Physical Profile), item 76 (Significant or Disqualifying Defects) and item 77 (Summary of Defects and Diagnoses) reflects no entries.

(4) A memorandum, subject: Law Enforcement Report – Final dated 15 May 2018, reflects the applicant as the named subject with the offenses of driving under the influence, failure to maintain lane, and too fast for conditions, with occurrence on or about 31 March 2018.

(5) A DA Form 4856 (Developmental Counseling Form) dated 3 July 2018, reflects the applicant received event oriented counseling from their platoon sergeant for driving under the influence (DUI), failure to maintain lane and too fast for conditions. The Key Points of

Discussion states on 31 March 2018, Military Police responded to a traffic accident, the applicant was driving under the influence, admittedly at 60 miles per hour around the barracks, lost control, crashing into a light pole, rolling their car multiple times resulting in their passenger being ejected from the vehicle. The applicant failed to ensure the safety of their passenger, as they were not wearing a seat belt and the applicant endangered the lives of all Soldiers in the area by operating a vehicle with a blood alcohol level of 0.165. The applicant agreed with the information and signed the form.

(6) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 8 August 2018, reflects the applicant received nonjudicial punishment for on or about 31 March 2018, physically control a vehicle while the alcohol concentration in their blood or breath equaled or exceeded the applicable limit under the statute and did thereby cause said vehicle to eject and injure their passenger. This is a violation of Article 113 (Drunken or Reckless Driving), UCMJ. Their punishment consisted of a reduction in rank/grade from private first class/E-3 to private two/E-2, suspended, forfeiture of \$918.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(7) A memorandum, Alpha Company, 3rd Battalion, 15th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense [Applicant], undated, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for operating a motor vehicle while drunk. On 17 September 2018, the applicant acknowledged receipt of notification for separation.

(8) A DA Form 3349 (Physical Profile Record) dated 2 October 2018, reflects the applicant's permanent profile for their lower back injury/pain with a rating of "3" which signifies the individual has a medical condition that may require significant limitations.

(9) A DA Form 7652 (Disability Evaluation System Commander's Performance and Functional Statement) dated 22 October 2018, reflects applicant's company commander states:

(a) The applicant is currently assigned as a Rifleman but is not able to perform their duties. They are permanently, physically unable to wear Personal Protective Equipment without worsening their condition or ride in a military vehicle. They are restricted to moving no more than 40 pounds a distance of 100 yards and is unable to do foot marches or movements with body armor or rucksack. The inability to ride in a military vehicle, while serving in a mechanized infantry formation, drastically limits their ability to serve.

(b) They currently work full duty days, but the scope of their duties is severely limited by the restrictions placed on them, and out of last 2 years they have spent 437 days on some form of profile. Keeping him in the Army and assigned to this unit hinders the company's readiness because they are taking a slot that would otherwise go to an able bodied infantryman. The applicant is currently undergoing an administrative separation under Army Regulation 635-200, paragraph 14-12c for driving under the influence which may have also contributed to their physical condition.

(10) A DA Form 3947 (Medical Evaluation Board (MEB) Proceedings) dated 6 November 2018, reflects the MEB finds the applicant's medical condition, chronic low back pain, with an approximate date of origin of 20 March 2017, does not meet retention standards. The MEB recommends the applicant be referred to a Physical Evaluation Board. Section (Final Action by Approving Authority) was not signed or dated.

(11) A memorandum, Alpha Company, 3rd Battalion, 15th Infantry Regiment,, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c,

Commission of a Serious Offense, [Applicant], dated 6 November 2018, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states the applicant does possess the potential for useful service under conditions of full mobilization if in a less physically demanding job due to their current medical limitations.

(12) On 7 November 2018, the applicant completed their election of rights, signing they had been advised by consulting counsel of the basis for contemplated action to separate them for commission of a serious offense, and its effect; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They understood if they are subject to the issuance of a discharge of less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws and they may expect to encounter substantial prejudice in civilian life. The applicant elected to submit matters on their behalf. (Note: the applicant's matters in their behalf is not in evidence for review).

(13) A memorandum, Headquarters, 3rd Infantry Division & Fort Stewart, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense regarding [Applicant], dated 30 January 2019, the separation authority carefully considered the Administrative Separation and the MEB for the applicant to determine whether the applicant's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation or if there are other circumstances of the applicant's case that warrant disability processing instead of further processing for administrative separation. The separation authority directed the applicant be separated from the Army prior to the expiration of their current term of service with a General (Under Honorable Conditions) characterization of service under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense.

(14) On 14 February 2019, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 2 years, 8 months, and 28 days of net active service this period and did not complete their first full term of service obligation of 3-years, 16-weeks. Their DD Form 214 shows in –

- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct (Serious Offense)]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

(15) On 7 January 2021, the Army Discharge Review Board (ADRB) denied the applicant's request to upgrade their characterization of service from general (under honorable conditions) to honorable. The Board determined –

(a) The record confirms the applicant's discharge was appropriate because the quality of their service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. It brought discredit on the Army and was prejudicial to good order and discipline.

(b) The applicant provided no independent corroborating evidence demonstrating either the command's action was erroneous or that their service mitigated the misconduct or poor duty performance, such that they should have been retained on Active Duty.

(c) The applicant's service record contains no evidence of depression diagnosis, and the applicant did not submit any evidence to support the contention that the discharge was the result of any medical condition.

(d) With the applicant's contention that they should have been medically discharged, Army Regulation 635-200, in pertinent part, stipulates commanders will not take action to separate Soldiers for medical conditions solely to spare a Soldier who may have committed serious acts of misconduct. Their 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 process.

(16) On 13 April 2022, the ADRB denied the applicant's request to upgrade their characterization of service from general (under honorable conditions) to honorable. The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration, the applicant's assertion of depression did not mitigate the aggravated DUI which resulted in serious damage and injury. 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:** Neuropsychiatric Review and Evaluation, dated 20 August 2023, reflects a psychiatrist/neurosurgeon's opinion that the applicant's service connected intervertebral disc disorder and chronic pain are comorbid disorders with their substance use disorder and mood disorders. The applicant was not fit to continue on active duty in the Army and should have been referred to a MEB. The applicant should be evaluated by the Department of Veterans Affairs (VA) for their service connected lumbar intervertebral disc syndrome and be given a disability rating. The applicant should be evaluated by the VA for possible service connected mental health disorder including substance use disorders and mood disorders including Major Depression and possible Bipolar Disorder.

(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 Exhibits
 - Exhibit 1 – Medical Documents prior to enlistment in the Regular Army
 - Exhibit 2 – Applicant's Memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant]
 - Exhibit 3 – DA Form 3947 (MEB Proceedings) with supporting documents
 - Exhibit 4 – Memorandum, Headquarters, 3rd Battalion, 15th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 15 November 2018
 - Exhibit 5 – Memorandum, Headquarters, 2nd Armored Brigade Combat Team, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 19 November 2018

- Exhibit 6 – Memorandum, Headquarters, 3rd Infantry Division & Fort Stewart, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 30 January 2019
- Exhibit 7 - Alpha Company, 3rd Battalion, 15th Infantry Regiment,, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant]
- Exhibit 8 – Memorandum, Headquarters, 3rd Battalion, 15th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 15 November 2018
- Exhibit 9 – Exhibit 12 – 3rd Party Character Reference Statements

- Neuropsychiatric Review and Evaluation, dated 20 August 2023

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

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

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

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

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

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

d. Army Regulation 40-501 (Standards of Medical Fitness), dated 14 June 2017, 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

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 (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.

f. 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, paragraph 14-12c, misconduct (serious offense).

g. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

(1) Paragraph 4-1 (Scope of the DES) states the IDDES features consists of a single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit and a single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

(2) Paragraph 4-3 (Soldiers Absent Without Leave, Undergoing or Pending Adverse Actions or Involuntary Administrative Separation, or Prognosis of Imminent Death) provides Soldiers under processing for an administrative separation for misconduct remain eligible to be

referred to the MEB. The Soldier's commander must notify the Soldier's physical evaluation board liaison officer in writing that administrative separation action has been initiated. The Soldier's complete MEB must be referred to the Soldier's General Court-Martial Convening Authority (GCMCA) to determine whether the Soldier will be referred to the Physical Evaluation Board. Approval and suspension of an administrative separation action is not authorized when the Soldier is pending both an administrative separation or disability evaluation for separation action. The GCMCA must decide which action to pursue. Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by U.S. Army Physical Disability Agency for the Secretary of the Army. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.

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 DoD Instruction 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. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

j. Manual for Courts-Martial, United States, (2019 Edition) 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 order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows

the maximum punishments include punitive discharge for violating the Article 113 (Drunken or Reckless Operation of a Vehicle).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the applicant's AMHRR reflects the applicant received nonjudicial punishment under Article 15, UCMJ for driving under the influence and causing injury to their passenger. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 2 years, 8 months, and 28 days of net active service this period; however, they did not complete their 3-year, 16-week contractual enlistment 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD, or any other mental health condition, nor did the applicant provide evidence of any behavioral health diagnoses during their military service. The applicant's Neuropsychiatric Review and Evaluation, Independent Medical Evaluation dated 20 August 2023, reflects the opinion of a Boarded Psychiatrist/Neurosurgeon and does not provide any behavioral health diagnoses. The evaluation recommends further evaluation by the VA.

e. The separation authority carefully considered the Administrative Separation and the MEB for the applicant to determine whether the applicant's medical condition was the direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation or if there were other circumstances of the applicant's case that warrant disability processing instead of further processing for administrative separation. The separation authority directed administrative separation with general (under honorable conditions) characterization of service.

f. Published DoD 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): On 16 April, 2024, applicant's counsel provided: a 12-page "Vincenzo G. Ruggiero - Supplemental Mental Health Evidence Army Discharge Review Board – AR 20230010236" – that was added to the case file and considered by the Board.

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): Mr. T.R. (counsel), Mr. P.L. (witness)

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: Self-assertions of Bipolar Disorder, PTSD, and Depression.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant self-asserts PTSD and depression diagnoses occurred during active duty. Bipolar Disorder is self-asserted to have started post military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that record review indicates that the applicant was not diagnosed with any major psychiatric condition while on active duty. There is no information in the available records to support a diagnosis of bipolar disorder while applicant was on active duty but was never specifically evaluated for any mood disorder. The applicant's 20 Aug 2023 neuropsychiatric evaluation, while detailed and lengthy, is largely speculatively and based upon anecdotal information obtained verbally from the applicant and record review. In this report, the provider does not definitively diagnose the applicant with any psychiatric condition. Rather, recommends the applicant be evaluated by the VA "for a possible service-connected mental health disorder including substance use disorders and mood disorders including Major Depression and possible Bipolar DO." Based on the available information and notwithstanding the psychiatric documentation provided by the applicant, it is the opinion of the Agency BH Advisor that there are no mitigating BH conditions.

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

b. Response to Contention(s):

(1) The applicant contends they seek relief in the interest of propriety, equity, and clemency. Due to a lack of adequate and timely care of severe lower back injuries and ensuing mental health problems, including Post-Traumatic Stress Disorder (PTSD) and depression during their military service; their general (under honorable conditions) characterization of service was erroneous. The Board considered this contention and determined the applicant does not have any BH conditions or experiences that mitigate or outweigh the applicant's driving while drunk basis for separation. Therefore, the applicant was properly and equitably discharged.

(2) The applicant contends they are relying on multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018, that advances in the treatment of mental health have revealed that there is a correlation between PTSD and misconduct. The Board considered this contention and determined the applicant does not have any BH

conditions or experiences that mitigate or outweigh the applicant's driving while drunk basis for separation. Therefore, the applicant was properly and equitably discharged.

(3) The applicant contends the separation authority did not consider behavioral health problems as Army providers failed to properly diagnose the applicant's pre-existing back injury, aggravating military injuries and the resulting mental health issues. The Board considered this contention and determined the separation authority considered all available factors prior to separation. The applicant's pre-existing back injury and mental health issues do not mitigate or outweigh the applicant's basis for separation, driving while drunk.

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

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Self-assertions of Bipolar Disorder, PTSD, and Depression did not excuse or mitigate the offense of driving while drunk. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

11. BOARD ACTION DIRECTED:

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

Authenticating Official:

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

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

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

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

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