

1. Applicant's Name: [REDACTED]**a. Application Date:** 18 August 2023**b. Date Received:** 18 August 2023**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant through counsel, requests an upgrade to honorable and a narrative reason change to Secretarial Authority. In addition, reconsideration of ADRB AR2021000125, 6 August 2023.

b. The applicant through counsel, states:

(1) The applicant requests the applicant's application be considered under the Kurta memorandum (see exhibit 8 - Kurta Memo) given both the applicant's PTSD diagnosis and documented brain injury. The applicant was first diagnosed with PTSD shortly following their second deployment to Iraq in 2008 (see exhibit 9 - PTSD Record). The VA determined the applicant's PTSD to be service related. The applicant was also diagnosed with a TBI following a blow to the head. The applicant underwent an evaluation by the TBI clinic on 28 October 2013. With regards to the brain injury, the medical records indicate the applicant was struck on the back of the head while deployed in Korea and therefore likewise occurred during military service. The evaluation (exhibit 11) (analyst notes - quoted material in exhibit 11 is not present) concluded:

(a) "[The applicant's] neuropsychological test results are notable for deficits in executive functioning and visual and verbal memory of uncertain etiology. [The applicant's] history of a mild brain injury likely contributes to [the applicant's] deficits, given the temporal relation to [the applicant's] onset of symptoms; however chronic fatigue, stress and headaches likely factor in prominently to [the applicant's] current presentation. Overall, [the applicant's] language abilities were intact in regards to comprehension, repetition, reading and fluency of speech. Some mild word-finding was noted on a confrontation naming task; however, cultural differences may partially account for this finding. [The applicant's] pattern of language is most consistent with a mild anomia in addition to a mild expressive language impairment. [The applicant's] difficulties in word-finding may be attributable to [the applicant's] deficits in executive functioning and processing speed, resulting in deficits in selecting and implementing searching strategies when [the applicant] struggles to come up with a word. Furthermore, [the applicant's] executive functioning deficits appear to contribute to [the applicant's] difficulties in organizing information to be learned, resulting in memory performance well below expectations given [the applicant's] educational background."

(b) The TBI examination (analyst notes - TBI examination was not provided) concluded, "[The Applicant's] neuropsychological test results are notable for deficits in executive functioning and visual and verbal memory of uncertain etiology. "[The applicant's] history of a mild brain injury likely contributes to "[the applicant's] deficits, given the temporal relation to "[the applicant's] onset of symptoms ..."

(2) The applicant through counsel, contends that per the Kurta Memorandum, both the applicant's PTSD and TBI, which clearly existed at the time of the discharge, be liberally considered as excusing and mitigating the applicant's discharge. The applicant through counsel, respectfully requests that these diagnoses be afforded liberal consideration when considering the applicant's claim.

(3) The applicant through counsel, contends that the applicant's PTSD and TBI diagnoses outweighs the discharge. The applicant's conduct was the result of poor judgment, brought on by the physical and mental conditions suffered while serving their country.

(4) The applicant was a dedicated and selfless Soldier who served three tours of duty in Iraq. The applicant's officer evaluation reports (OER) (exhibit 12, analyst notes - OERs was not provided as stated in the legal brief on pages 8-11, however, OERs was obtained from the AMHRR) shows the applicant exemplified the Army values of honor, integrity, courage, loyalty, respect, selfless service, and duty. The OERs from 25 September 2005 through 10 June 2014, shows in part:

- "was specifically commended by the Clinic Commander for [applicant] work with the redeployment of troops to Kitzingen [Kitzinger]"
- responsible for developing and managing various programs to "screen, identify, and improve the mental health of Soldiers and their families ..."
- "responsible for the overall direction of the Social Work Department in support of over 11,000 active duty, dependent, DOD personnel, and retire beneficiaries in the Schweinfurt community"
- "clinical and management skills have contributed significantly to the care of thousands of Soldiers that required immediate Combat Stress Services"
- "conducted mass trauma event management debriefings for 8 events aiding in the recovery process for 57 Soldiers"
- assigned the "most difficult" patients given the applicant's "military bearing and deployment experience"
- "very good clinical social worker," but the applicant "needs to develop the ability to encourage subordinates through positive motivational methods such as praise"
- "very short staffed" but that the applicant used "superb management" to serve a "patient population that is very high risk for detrimental outcomes"

(5) After two consecutive fully qualified ratings, the applicant began to show a change in behavior after their second deployment. This change aligns with the progression of the applicant's PTSD.

(6) Despite these years of remarkable dedication, the applicant's discharge will stigmatize and harm the applicant for the rest of the applicant's life. "Since the vast majority of discharges from the armed forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs [them] of [their] good name. It injures [their] economic and social potential as a member of the general community." *Sofranoff v. United States*, 165 Ct. Cl. 470 (Ct. Cl. 1964).

(7) Issue 1 - Place Of Duty - The applicant through counsel contends, the applicant spoke to their supervisor about teaching Social Work 202 to students interested in becoming a Clinical Specialist at the University of Anchorage, AK (UAA), however, the supervisor did not remember telling the applicant it was okay. When ordered to stop teaching at the university in the middle of the semester the applicant stopped. The UAA had an education agreement with the local Army and Air Force Bases.

(8) Issue 2 - The applicant through counsel contends, they had approved leave in place to attend the Suicide Prevention Conference, however, it was canceled the day prior to the conference.

(9) Issue 3 - The applicant through counsel contends, the hostile work environment the applicant was accused of was from one person who complained about many people. The applicant was removed from the Chief position, and replaced by a colonel who later received the same accusations by the same accuser and was removed from the position.

(10) Issue 4 - The applicant through counsel contends, to not have a personality disorder. That was a misdiagnosis based on feedback from the applicant's command team to separate the applicant out of the military without benefits. Five doctors in the applicant's medical records have reviewed the applicant without a personality disorder diagnosis.

c. Board Type and Decision: In a records review conducted on 11 March 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 600-8-24, the narrative reason for separation to Misconduct, with a corresponding separation code of JKB.
*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: Unacceptable Conduct / AR 600-8-24, Chapter 4-2B / JNC / General (Under Honorable Conditions)

b. Date of Discharge: 4 May 2015

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 5 June 2014

(2) **Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2a for substandard performance of duty, 4-2b (8) for misconduct (conduct unbecoming of an officer), and 4-2c (5) for receiving adverse information filed in the AMHRR in accordance with AR 600-37, for the following reasons:

(a) Derogatory information resulting in a General Officer Memorandum of Reprimand (GOMOR), 20 December 2013, that was filed in the applicant's AMHRR. The GOMOR states the applicant engaged in off-duty employment without prior permission from the U.S. Army Medical Activity - AK Commander; the applicant departed their appointed place of duty without proper authority; the applicant established a hostile work environment; and the applicant allowed material to be presented at a medical conference without having the presentation properly approved by the applicant's superiors.

(b) Conduct unbecoming an officer as indicated by the above-referenced GOMOR.

(c) The applicant has six referred OERs for the periods of 5 November 2006 - 4 November 2007, 18 September 2008 - 17 September 2009, 18 September 2009 - 11 February 2010, 11 February 2010 - 6 October 2010, 1 June 2012 - 15 November 2012, and 16 November 2012 - 10 June 2013, which were filed in their AMHRR. As a result, the applicant

was identified by the FY13 Major, Medical Specialist Corps, Promotion Selection Board to show cause for retention on active duty.

(3) Legal Consultation Date: An unsigned Memorandum for Record, subject: Waiver of Defense Counsel, is in the applicant's AMHRR. However, the applicant's counsel for this application, states in the legal brief on page 3 of 12 that the applicant waived legal counsel. Footnote 2 states the waiver is not in the applicant's official military personnel file.

(4) Board of Inquiry (BOI):

(a) On 11 September 2014, the applicant was notified to appear before a BOI and advised of their rights.

(b) On 20 October 2014, a BOI convened, the applicant did not appear before the board and there was no legal representation on behalf of the applicant. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

(c) On 6 January 2015, the GOSCA approved, with an exception, the findings and recommendations of the BOI.

(5) GOSCA Recommendation Date / Characterization: On 6 January 2015, the GOSCA recommended the applicant be eliminated from the Army prior to the expiration of their term of service. / General (Under Honorable Conditions)

(6) DA Board of Review for Eliminations: On an unknown date, the Army Board of Review for Eliminations considered the GOSCA's request to involuntarily separate the applicant for unacceptable conduct in accordance with AR 600-8-24, paragraph 4-2a-c.

(7) Separation Decision Date / Characterization: 17 April 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 24 June 2005 (Reserve AD, beginning of period under review and date the applicant was ordered to AD) / 36 months and 13 September 2005 (RA AD) / Indefinite

b. Age at Appointment: / Education: 39 / Master of Social Work and Master of Education

c. Highest Grade Achieved / MOS / Total Service: O-3 / 67D 9B Behavioral Sciences and 73A Social Worker / 9 years, 10 months, and 11 days

d. Prior Service / Characterizations: USAR, 9 March 2005 - 12 September 2005 / HD

e. Overseas Service / Combat Service: Germany, Korea, SWA / Iraq (3 August 2006 - 5 November 2007; 28 January 2007 - 15 April 2008; 17 April 2010 - 3 May 2011)

f. Awards and Decorations: ICM-5CS, ARCOM-3, NDSM-BSS, KSM, GWOTSM, ASR, OSR-6

g. Performance Ratings: 28 September 2005 - 25 January 2006 / Best Qualified
26 January 2006 - 7 July 2006 / Best Qualified
8 July 2006 - 4 November 2006 / Best Qualified

5 November 2006 - 4 November 2007 / Best Qualified (R)
5 November 2007 - 17 April 2008 / Best Qualified
18 April 2008 - 17 September 2008 / Best Qualified
18 September 2008 - 17 September 2008 / Best Qualified
18 September 2008 - 17 September 2009 / Fully Qualified (R)
18 September 2009 - 11 February 2010 / Fully Qualified (R)
11 February 2010 - 6 October 2010 / Best Qualified (R)
7 October 2010 - 30 April 2011 / Best Qualified
28 May 2011 - 27 August 2011 / NIF
28 August 2011 - 1 June 2012 / Best Qualified
1 June 2012 - 15 November 2012 / Fully Qualified (R)
16 November 2012 - 10 June 2013 / Fully Qualified (R)
11 June 2013 - 10 June 2014 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) Memorandum for All Personnel, U.S. Army Medical Activity - Alaska, subject: Off-Duty Employment Statement of Understanding, 3 June 2013, states the applicant was aware the commander's approval was required prior to off duty employment. This memorandum is signed by the applicant.

(2) Emails between U.S. Army Medical Command (MEDCOM) leaders reference the applicant's off-duty employment -

(a) 4 June 2013 - Lieutenant Colonel (LTC) P__ L. G__ sent the applicant's off-duty employment request to LTC C__ H. W__, stating before Colonel (COL) T__ left, they reviewed the applicant's plan and supported it.

(b) 5 September 2013 - LTC G__ informed the applicant that the off-duty employment request was sent to LTC W__ and that they would look for the concurring e-mail from COL T__.

(c) 10 September 2013 - LTC L__ A. N__ requested any historical documents related to the applicant's off-duty work that may have been signed by their predecessor and COL L__ from the U.S. Army MEDCOM BSAC staff. The applicant only had the original packet from June and one of two signature pages.

(d) 11 September 2013 - LTC W__ recalls being told there would be paperwork on the applicant but did not receive it for signature. LTC W__ expressed some reservation because the applicant was not meeting the Army physical fitness test height and weight standards and had behavioral health access issues.

(3) Memorandum for Commander, U.S. Army Medical Activity - AK, subject: Employer Certification of Acknowledgement of U.S. Medical Activity - AK Off-Duty Employment Conditions, shows it is signed by the applicant on an unspecified date.

(4) Memorandum, subject: Request for Off-Duty Professional Employment, states the applicant requested to engage in off-duty employment beginning 30 August 2013 at the UAA, however, this request is only signed by the applicant and is not signed by the approval authority.

(5) Developmental Counseling Form, 4 September 2013, shows the applicant was counseled for unsatisfactory performance by disobeying a directive. The applicant failed to have outside presentation materials vetted by a superior.

(6) The applicant through counsel provided:

(a) Exhibit 3 - Informal AR 15-6 Investigation Findings and Recommendations, 23 September 2013, shows the investigating officer found:

- The applicant created a hostile work environment within the clinic by taking retribution against personnel for bringing behavioral health issues to the attention of higher authority
- The applicant was given explicit instructions (verbal direct order) not to participate / present information at a civilian medical gathering at the UAA
- On 3 September 2013, the applicant participated in and/or presented speakers at a civilian medical gathering at the UAA
- The applicant distributed written materials to the participants at the medical gathering explicitly or implicitly suggesting sponsorship of materials or endorsement by the U.S. Army or U.S. government
- The applicant did not sanction participation in the medical gathering
- Contracted providers employed within the Department of Behavioral Health was not authorized to participate in the medical gathering, however they were in a non-duty status
- The applicant was employed by the UAA and did not have documented approval for off-duty employment
- The applicant is clinically proficient and administratively deficient
- The investigating officer recommended “referral of the case to the credentialing committee for investigation” and “the appropriate adverse administrative and/or UCMJ [Uniform Code of Military Justice] action be taken by the Fort Richardson Medical Detachment Command”

(b) Exhibit 4 - Legal Review, 9 October 2013, shows the AR 15-6 findings and recommendations were legally sufficient.

(c) Exhibit 5 - GOMOR, 20 December 2013, states: “[The applicant] are reprimanded for engaging in off-duty employment without prior permission from the United States Army Medical Activity - Alaska, Commander; for departing [the applicant’s] appointed place of duty without proper authority; for establishing a hostile working environment for employees within the Behavioral Health Department; and for allowing material to be presented at a medical conference without having the presentation properly approved by [the applicant’s] superiors ...”

(d) Exhibit 6 - Acknowledgment of Receipt of Reprimand, 9 January 2014, shows the applicant elected not to submit matters in their own behalf.

(e) Memorandum, subject: Filing Determination on Reprimand, 7 February 2014, states the GOMOR was permanently placed in the applicant’s AMHRR.

(7) The GOSCA Memorandum Thru, Commander, U.S. Army Medical Department Activity-AK, Fort Wainwright, AK, subject: Initiation of Elimination, 1 May 2014, shows an elimination action was initiated against the applicant. The applicant was required to show cause for retention on active duty under the provisions of AR 600-8-24 because derogatory information was filed in the applicant’s AMHRR, misconduct, and substandard performance of duty. Specifically, a GOMOR, 20 December 2013, which was filed in the applicant’s AMHRR; and receipt of six referred OERs.

(8) On 5 June 2014, the applicant acknowledged receipt of the notification for elimination and elected to submit a request for a BOI.

(9) Memorandum, subject: Notification to Appear before a BOI, 11 September 2014, shows the applicant was notified of their rights to appear before the BOI.

(10) Report of Proceedings by a Board of Officers, 20 October 2014, shows the findings and recommendations of the BOI found the applicant did have derogatory information filed in their AMHRR; did have misconduct, to wit: GOMOR, 20 December 2013, which was filed in the applicant's AMHRR; and did have substandard performance of duty, to wit: six referred OERs. The board recommended the applicant be separated from active duty with an under other than honorable conditions characterization of service.

(11) On 16 December 2014, the applicant acknowledged receipt of the BOI report, transcript, and all exhibits considered by the board. The applicant elected not to submit an appellate brief or statement and did not wish to receive a copy of the Board of Review report.

(12) Memorandum For Commander, U.S. Army Human Resources Command, subject: Recommendation for Officer Elimination- [Applicant], 6 January 2015, shows the GOSCA concurred with the board to eliminate the applicant and recommended the applicant be separated from the Army prior to the expiration of their term of service with a general, under honorable conditions characterization of service.

(13) On an unknown date, the Army Board of Review for Eliminations reviewed the applicant's case.

(14) Memorandum For Commanding General, U.S. Army Human Resources Command, subject: Officer Elimination Case [Applicant], 17 April 2015, shows the Deputy Assistant Secretary of the Army (Review Boards) involuntarily eliminated the applicant from the U.S. Army with an general (under honorable conditions) characterization of service. The elimination was based on misconduct and moral or professional dereliction (AR 600-8-24, paragraph 4-2b), derogatory information (AR 600-8-24, paragraph 4-2c), and substandard performance of duty (AR 600-8-24, paragraph 4-2a).

(15) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant completed the first full term of service. The applicant was discharged on 4 May 2015 under the authority of AR 635-200, paragraph 4-2b, with a narrative reason of Unacceptable Conduct. The DD Form 214 was authenticated with the applicant's electronic signature.

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

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

(1) **Applicant provided:**

(a) Exhibit 9 - PTSD Record, shows the applicant was seen at the Social Work clinic on 8 January 2009. Listed problems, in part, depression and adjustment disorder with depressed mood. The applicant was diagnosed with PTSD. The applicant reported disturbing thoughts, images, dreams, trouble sleeping, hypervigilance, and trouble concentrating. The applicant was prescribed Prozac, and later Wellbutrin and Trazadone for sleep.

(b) VA benefits letter, 26 October 2015, shows the applicant was rated 90 percent disabled. The applicant received 50 percent disability for PTSD (also claimed as dysthymic disorder, depressive neurosis, depression, adjustment disorder with depressed mood, anxiety

disorder, primary snoring, and insomnia); and 0 percent for residuals of TBI with mild expressive aphasia and anomia (also claimed as decreased concentrating ability, cognitive communication disorder, dysphasia, history of concussion, late effect intracranial injury, and memory lapse and loss).

(2) AMHRR Listed:

(a) Report of Medical History, 1 December 2014, the examining medical physician noted the applicant's medical conditions in the comments section, in part: Status post-concussion stated had a brief loss of vision, evaluated by the mild TBI (mTBI) clinic, migraine headache, post concussive syndrome, dysthymia, and PTSD.

(b) Report of Medical Assessment, 2 December 2014, shows the examining medical physician noted in the comments section, in part: History of concussion mTBI, post concussive syndrome, dysthymia, and PTSD.

(c) Report of Medical Examination, 4 December 2014, the examining medical physician noted in the summary of defects and diagnoses section, in part: History of concussion, post concussive syndrome, migraine headache, dysthymia, and PTSD.

(d) Report of Mental Status Evaluation, 3 March 2015, shows the applicant was unfit for duty because of a personality disorder or other mental condition which did not amount to a medical disability. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD with positive results and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with Persistent Depressive Disorder (Dysthymia) and TBI resulting in mild cognitive impairment. The applicant was treated in the TBI Clinic at Joint Base Elmendorf-Richardson and had a follow appointment. Psychiatric Screening attached.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 149; DD Form 214; Legal Brief with exhibits 1 through 11 (includes Report of Proceedings by Investigating officer, GOMOR, medical records, and ADRB - AR20210002125); Item 1 - Explanation and references; VA Benefits letter.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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 PTSD, 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), 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 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of

acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(3) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(4) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(5) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

e. Army Regulation 635-5-1 (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 "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

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

a. The applicant requests an upgrade to honorable and a narrative reason change to Secretarial Authority. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 9 years, 10 months, and 11 days during which the applicant served 4 years, 9 months, and 1 day of foreign service between three tours in Iraq, Korea, and Germany. After an informal AR 15-6, the applicant received a GOMOR on 20 December 2013. On 5 June 2014, the applicant was notified by the GOSCA to show cause for retention on active duty under the provisions of AR 600-8-24. On 20 October 2014, a BOI found the applicant did have derogatory information filed in their AMHRR; did have misconduct, to wit: GOMOR, 20 December 2013, which was filed in the applicant's AMHRR; and did have substandard performance of duty, to wit: six referred OERs. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions. The GOSCA recommended discharge with a characterization of general (under honorable conditions). On 17 April 2015, the Deputy Assistant Secretary (Army Review Boards) involuntarily eliminated the applicant from the U.S. Army with a general (under honorable conditions) characterization of service.

c. The applicant through counsel, requests the narrative reason for the discharge to be changed to Secretarial Authority. The applicant was separated under the provisions of Chapter 4, paragraph 4-2b, AR 600-8-24 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is

“Unacceptable Conduct,” and the separation code is “JNC.” Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel, requests the applicant’s application be considered under the Kurta memorandum (see exhibit 8 - Kurta Memo) for the applicant’s PTSD and TBI diagnoses. The applicant through counsel, contends the PTSD and TBI clearly existed at the time of the discharge and outweighs the discharge and should be liberally considered as excusing and mitigating for the applicant’s discharge.

(1) The applicant provided exhibit 9 - PTSD Record, showing the applicant’s PTSD diagnosis in January 2009. A VA benefits letter, 26 October 2015, showing the applicant was rated 50 percent disability for PTSD; 0 percent for residuals of TBI with mild expressive aphasia and anomia; and received a 90 percent combined rating.

(2) The applicant’s AMHRR shows the applicant underwent a medical examination on 4 December 2014, showing the examining medical physician noted in the summary of defects and diagnoses section, in part: History of concussion, post concussive syndrome, migraine headache, dysthymia, and PTSD. The applicant also underwent a Mental Status Evaluation on 3 March 2015, that shows the applicant was unfit for duty because of a personality disorder or other mental condition which did not amount to a medical disability. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD with positive results and mTBI with negative results. The applicant was diagnosed with Persistent Depressive Disorder (Dysthymia) and TBI resulting in mild cognitive impairment. The applicant was treated in the TBI Clinic at Joint Base Elmendorf-Richardson.

(3) Analyst notes - Counsel refers to TBI examination notes in exhibit 11 - Medical Record, however, exhibit 11 does not show record of a TBI examination. On 27 February 2024, the Military Review Board representative emailed the applicant and counsel requesting documentation showing the quotes counsel made pertaining to a TBI examination. On the same date, the applicant responded, stating they was treated at Joint Base Elmendorf-Richardson hospital, Elmendorf Air Force Base, AK in the TBI clinic for almost a year. The applicant was prescribed medications for migraines and had at least 10 appointments with the TBI doctor and received rehabilitation for balance and vertigo at the same hospital.

e. The applicant through counsel contends, in effect, the applicant spoke to their supervisor about teaching Social Work 202 to students interested in becoming a Clinical Specialist at the UAA, however, the supervisor did not remember telling the applicant it was okay. The applicant did not provide evidence for approved off-duty employment. The AMHRR contains:

(1) Memorandum for All Personnel, U.S. Army Medical Activity - Alaska, subject: Off-Duty Employment Statement of Understanding, 3 June 2013, states the applicant was aware the commander’s approval was required prior to off duty employment.

(2) Memorandum, subject: Request for Off-Duty Professional Employment, showing the applicant requested to engage in off-duty employment beginning 30 August 2013 at the UAA, however, it is only signed by the applicant and is not signed by the approval authority.

f. The applicant through counsel contends, in effect, to have had approved leave in place to attend the Suicide Prevention Conference, however, it was canceled the day prior to the conference. The applicant did not provide evidence of approved or cancelled leave.

g. The applicant through counsel contends, in effect, the hostile work environment the applicant is accused of was from one person who complained about many people. The applicant was removed from the Chief position, replaced by a colonel who later received the same accusations by the same accuser. The applicant provided exhibit 3 - Informal AR 15-6 Investigation Findings and Recommendations, 23 September 2013, showing the investigating officer found the applicant created a hostile work environment within the clinic by taking retribution against personnel for bringing behavioral health issues to the attention of higher authority.

h. The applicant through counsel contends, in effect, to not have a personality disorder. That was a misdiagnosis based on feedback from the applicant's command team to separate the applicant out of the military without benefits. Five doctors in the applicant's medical records have reviewed the applicant without a personality disorder diagnosis. The applicant did not provide medical records showing the five doctors evaluations. The AMHRR shows the applicant underwent a mental status evaluation on 3 March 2015, which indicates the applicant was unfit for duty because of a personality disorder or other mental condition which did not amount to a medical disability. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD with positive results and mTBI with negative results. The applicant was diagnosed with Persistent Depressive Disorder (Dysthymia) and TBI resulting in mild cognitive impairment. The applicant was treated in the TBI Clinic at Joint Base Elmendorf-Richardson and had a follow appointment.

i. The applicant through counsel, contends great service, including three combat tours and excellent OERs between 2005 and 2014. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

j. 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):** Medical Records
- b. **The applicant presented the following additional contention(s):** None
- c. **Counsel / Witness(es) / Observer(s):** Counsel

10. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD

and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Chronic PTSD; Adjustment DO with depressed mood; Cognitive Communication DO; TBI. VA: PTSD, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that Chronic PTSD; Adjustment DO with depressed mood; Cognitive Communication DO; TBI were diagnosed during military service. Service connection for PTSD and TBI establishes conditions began during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two BH conditions, PTSD and TBI, which mitigate some of the applicant's misconduct. As there is an association between these conditions and avoidant behavior, there is a nexus between the diagnoses of PTSD and TBI and her departing her appointed place of duty without prior permission. As there is an association between TBI and memory issues, there is a nexus between the diagnosis of TBI and forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference. Neither PTSD nor TBI mitigate the offenses of engaging in off-duty employment without prior permission and/or establishing a hostile work environment as neither of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Chronic PTSD; Adjustment DO with depressed mood; Cognitive Communication DO; TBI outweighed the medically unmitigated offenses of engaging in off-duty employment without prior permission and/or establishing a hostile work environment.

b. Prior Decisions Cited: AR2021000125

c. Response to Contention(s):

(1) The applicant through counsel, requests the applicant's application be considered under the Kurta memorandum (see exhibit 8 - Kurta Memo) for the applicant's PTSD and TBI diagnoses. The applicant through counsel, contends the PTSD and TBI clearly existed at the time of the discharge and outweighs the discharge and should be liberally considered as excusing and mitigating for the applicant's discharge. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

(2) The applicant through counsel contends, in effect, the applicant spoke to their supervisor about teaching Social Work 202 to students interested in becoming a Clinical Specialist at the UAA, however, the supervisor did not remember telling the applicant it was okay. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

(3) The applicant through counsel contends, in effect, to have had approved leave in place to attend the Suicide Prevention Conference, however, it was canceled the day prior to

the conference. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

(4) The applicant through counsel contends, in effect, the hostile work environment the applicant is accused of was from one person who complained about many people. The applicant was removed from the Chief position, replaced by a colonel who later received the same accusations by the same accuser. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

(5) The applicant through counsel contends, in effect, to not have a personality disorder. That was a misdiagnosis based on feedback from the applicant's command team to separate the applicant out of the military without benefits. Five doctors in the applicant's medical records have reviewed the applicant without a personality disorder diagnosis. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

(6) The applicant through counsel, contends great service, including three combat tours and excellent OERs between 2005 and 2014. The Board considered this contention and determined the applicant's diagnosis mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 600-8-24, the narrative reason for separation to Misconduct, with a corresponding separation code of JKB.

*Please see Section 10 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the BH condition mitigated the misconduct of forgetting to have superiors properly approve material the applicant subsequently presented at a medical conference and factors of length, quality and combat that outweighed the remaining misconduct which there was a lack of corroborating evidence for in the applicant's records. Thus, the prior characterization is no longer appropriate.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230010242

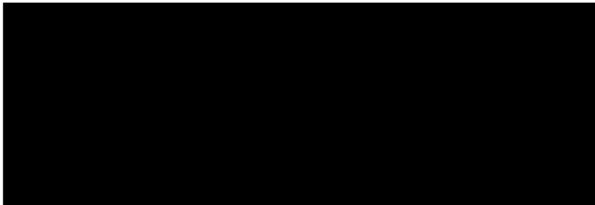
(3) As the applicant was an Officer, there is no reentry code supplied upon discharge, honorable or otherwise.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct / JKB
- d. Change Authority to: AR 600-8-24

Authenticating Official:

4/9/2024



Legend:

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

GOSCA - General Officer Show
Cause Authority
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