

1. Applicant's Name:

- a. **Application Date:** 11 June 2023
- b. **Date Received:** 20 June 2023
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant through counsel, requests an upgrade to honorable, and changes to the SPD code to "JFF," and narrative reason to reflect "Secretarial Authority."

- b. The applicant through counsel seeks relief contending, in effect:

(1) The characterization of service is improper due to the government's introduction of limited use evidence. The government introduced into the discharge packet the results of a biochemical test which was coded CO (Competence for Duty/Command Directed) which is Limited Use information as defined in AR 600-85 (The Army Substance Abuse Program) and mandates an honorable characterization of service when separation is directed. However, the Separation Authority approved separation under the provisions of AR 635-200, Chapter 10 which does not authorize an honorable characterization of service. Once the characterization of service is administratively changed to honorable, the narrative reason will become unauthorized.

(2) At the end of the applicant's career, the applicant was assigned as a drill sergeant at the Presidio of Monterey which is one of the highest cost-of-living areas in the country. The applicant was denied on-base housing and due to this, the applicant lived over 2 hours away in Merced, CA with the applicant's family and commuted daily to work. During this tour the applicant's father was accused of killing the applicant's mother (the father would be acquitted of this accusation). However, the applicant used the applicant's leave to travel for the applicant's mother's funeral and to the trial to support the applicant's father and was ordered back to work immediately upon the applicant's return each time. The overwhelming hours at work, long commute, financial strain, and death of the applicant's mother all took a toll on the applicant in the form of in-service anxiety and depression diagnoses (the applicant believes to have been diagnosed with PTSD but does not have a record of this and will rely upon the ARBA Medical Officer for any insight). The applicant began to self-medicate with marijuana due to these behavioral health conditions and unresolved back pain. Due to the loss of rank and money, finances became a major problem for the applicant's family and the applicant used the applicant's government travel credit card (GTCC) to cover expenses for gasoline or food for the applicant and family. It was an extremely difficult time for the applicant and the applicant paid back all the money owed on the GTCC.

(3) In an addendum to the initial legal brief, counsel contends, in effect, the current AR 635-200 states, if limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under chapter 10. However, AR 635-200 mandates that the separation authority must discount the limited use evidence, in writing, or the honorable characterization of service provisions of AR 600-85 will stand. The separation authority will include a statement in the

approval of separation under chapter 10 that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with Department of Defense Instruction 1010.01 and AR 600-85. The separation authority's memorandum does not show that the limited use evidence was discounted as required in order to direct a general or other than honorable separation. This Chapter 10 provision is fairly new so there are no Chapter 10 examples to cite from the ARBA Reading Room, but the precedent for upgrading an applicant due to this same type of prejudicial error has already been established by the ADRB in case AR20190004791, (Chapter 14c, (Serious Offense). In a 5-0 vote on 2 October 2019, the Board stated: "The Board determined the discharge is improper because the command used misconduct from a previous enlistment and the separation authority did not state the earlier misconduct was not considered for the purpose of characterization" and upgraded that applicant from general to honorable even though that applicant committed assault in addition to other misconduct. If the separation authority in the instant case had discounted the limited use evidence in writing, the discharge would be proper and equitable, but the separation authority did not adhere to regulatory guidance. Therefore, this discharge is also improper as proper separation procedures were not followed, the discharge was not within the discretion of the separation authority and the rights of the applicant were not protected.

(4) In-service accomplishments warrant clemency and relief. The applicant had an outstanding military career prior to the circumstances that led to the applicant's misconduct and discharge. The applicant served a total of over 10 years in the Army, achieved the rank of staff sergeant (E-6/SSG), served in a peacekeeping mission in Niger and was awarded the ARCOM-2, JSAM, and AAM-3.

(5) Post-service accomplishments warrant clemency and relief. The applicant has volunteered at church, being an outstanding husband and father and currently attending barber college with the goal of opening the applicant's own business.

(6) On 13 September 2023, counsel states the applicant does not have military medical records or has visited the Department of Veterans Affairs.

c. Board Type and Decision: In a telephonic personal appearance conducted on 4 November 2024, and by a 3-2 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.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 17 March 2022

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 3 March 2022, the applicant was charged with:

(a) Charge I - Violation of the UCMJ, Article 112a, for:

- Specification 1: At or near Monterey, CA, between on or about 27 December 2020 and 27 January 2021, wrongfully used tetrahydrocannabinol (THC)
- Specification 2: At or near Monterey, CA, between on or about 18 January 2021 and 27 February 2021, wrongfully used tetrahydrocannabinol (THC)

(b) Charge II - Violation of the UCMJ, Article 121a, for:

- Specification 1: At or near Merced, CA, on diver's occasions between on or about 1 June 2021 and on or about 30 June 2021, knowingly with intent to defraud, use a credit card, to wit: a GTCC without the authorization of A__ R. T__, a person whose authorization was required for such use to obtain property and services of a value of more than \$1000.00
- Specification 2: At or near Merced, CA, on diver's occasions between on or about 1 July 2021 and on or about 31 July 2021, knowingly with intent to defraud, use a credit card, to wit: a GTCC without the authorization of A__ R. T__, a person whose authorization was required for such use to obtain property and services of a value of more than \$1000.00
- Specification 3: At or near Merced, CA, on diver's occasions between on or about 1 August 2021 and on or about 31 August 2021, knowingly with intent to defraud, use a credit card, to wit: a GTCC without the authorization of A__ R. T__, a person whose authorization was required for such use to obtain property and services of a value of more than \$1000.00
- Specification 4: At or near Merced, CA, on diver's occasions between on or about 1 September 2021 and on or about 10 September 2021, knowingly with intent to defraud, use the credit card, to wit: a GTCC without the authorization of A__ R. T__, a person whose authorization was required for such use to obtain property and services of a value of less than \$1000.00

(c) Charge III - Violation of the UCMJ, Article 92, for: Specification: At or near Merced, CA, on diver's occasions between on or about 1 June 2021 and on or about 10 September 2021, violate a lawful general regulation, by wrongfully using the applicant's GTCC for personal use not related to official government travel.

(d) Charge IV - Violation of the UCMJ, Article 107, for: Specification: At or near Monterey, CA, on or about January 2022, with intent to deceive, make to Resident Agent-in-Charge V__ D__, an official statement, to wit: that the applicant had not used the applicant's GTCC since 2018, or words to that effect, which statement was false, in that the applicant had used it multiple times through summer 2021, and was then known by the applicant to be so false.

(e) Charge V - Violation of the UCMJ, Article 134, for: Specification: Being indebted to City Government Card Services in the sum of \$5402.18 for purchases, which amount became due and payable on or about 6 December 2021, did, at or near Merced, CA, from 6 December 2021 to 19 December 2022, dishonorably failed to pay that debt, and that said conduct was of a nature to bring discredit upon the Armed Forces.

(2) Legal Consultation Date: 7 March 2022

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

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 11 March 2022 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 18 April 2011 / 3 years and 28 weeks!
- b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 110
- c. Highest Grade Achieved / MOS / Total Service:** E-6 / 35S30, Signals Collector/Analyst / 10 years and 11 months.
- d. Prior Service / Characterizations:** RA, 18 April 2011 - 18 April 2019 / HD
- e. Overseas Service / Combat Service:** Niger and Italy / None
- f. Awards and Decorations:** ARCOM-2, JSAM, AAM-3, NDSM, GWOTEM, GWOTSM, NCOPDR-2, ASR, OSR
- g. Performance Ratings:** 1 April 2014 - 10 November 2015 / Fully Capable
 11 November 2015 - 17 January 2017 / Highly Qualified
 16 January 2017 - 20 December 2017 / Highly Qualified
 21 December 2017 - 20 December 2018 / Highly Qualified
 21 December 2018 - 21 July 2019 / Highly Qualified
 22 July 2019 - 24 April 2020 / Highly Qualified
 25 April 2020 - 3 May 2021 / Not Qualified
- h. Disciplinary Action(s) / Evidentiary Record:** Start here.
 - (1)** CID Form 94 (Agent's Investigation Report), 19 January 2021, states the applicant waived the applicant's rights and admitted to fraudulent use of the applicant's GTCC.
 - (2)** Electronic Copy of DD Form 2624, (Drug Test Results), 12 February 2021, reflects the applicant tested positive for THC 106 (marijuana during an Inspection Unit (IU) urinalysis testing, conducted on 4 January 2021).
 - (3)** Developmental Counseling Form, 22 February 2021, states the applicant informed the first sergeant on 18 February 2021 that the applicant had been using cannabidiol (CBD) pills since November 2020 for back pain relief in order to exercise for an upcoming height and weight in January 2021. The first sergeant states on 19 February 2021, the 100 percent post-holiday block leave urinalysis tested positive for THC. The applicant was informed that the applicant would be command directed to Substance Use Disorder Clinical Care.
 - (4)** Electronic Copy of DD Form 2624, 23 February 2021, reflects the applicant tested positive for THC 124 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 27 January 2021.
 - (5)** DA Form 2823 (Sworn Statement), 23 February 2021, states the same as the Developmental Counseling Form, 22 February 2021, see paragraph 4h (3) above.
 - (6)** Biochemical History shows:

- Collection date 4 January 2021, report date 12 February 2021, tested positive for THC during Unit Sweep urinalysis.
- Collection date 27 January 2021, report date 23 February 2021, tested positive for THC during an Inspection Random urinalysis
- Collection date 18 February 2021, report date 12 March 2021, tested positive for THC during a Command Directed urinalysis.
- Commander/supervisor referral on 4 March 2021 for the Alcohol and Drug **Abuse** Prevention and Treatment (ADAPT) Program
- Diagnosed with alcohol use disorder and substance abuse disorder.
- ADAPT class date 13 April 2021

(7) Army Substance Abuse Program, Repeat Positive Detail Report, 22 March 2021, shows the applicant tested positive for THC, during a CO (Command Directed) urinalysis testing, conducted on 18 February 2021.

(8) Report of Mental Status Evaluation, 9 April 2021, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant met the medical fitness standards for retention per AR 40-501, paragraphs 3-31 to 3-37 as there was no indication of a boardable behavioral health disorder at that time. Condition was not a disability and was not ratable by a physical evaluation board. Recommend command pursue expedited administrative separation per Department of Defense Instruction 1332.14, Enlisted Administrative Separations and AR-635-200, Active Duty Enlisted Administrative Separation. The applicant's condition did not warrant a referral to the integrated disability evaluation system. The applicant did not show symptoms associated with PTSD or TBI, nor reported an MST. The command was advised to prohibit use of alcohol.

(9) FG ROP under Article 15, UCMJ, 4 May 2021, shows:

- violated a general regulation by wrongfully consuming CBD pills without a valid prescription between on or about 1 November 2020 and 4 January 2021
- wrongful use of tetrahydrocannabinol (THC) between on or about 4 December 2020 and 4 January 2021
- punishment consisted of a reduction from E-6 to E-5; forfeiture of \$851.00 pay per month for 2 months (suspended); extra duty for 15 days; and restriction for 45 days.

(10) Memorandum for Record, subject: Removal from Drill SGT Program (Applicant), 24 May 2021, shows the applicant was removed from the drill sergeant program due to substantiated findings regarding drug use and enrollment in the Army body composition program.

(11) CID Form 94 (Agent's Investigation Report), 18 June 2021, states Special Agent D__ confirmed the applicant's GTCC was used on 8 and 24 July 2021 at the Chevron located 1.6 miles from the applicant's residential address.

(12) Citibank Government Card Statements, for closing dates 11 August, 11 September 2021, 11 October, and 11 November 2021, shows the applicant made unauthorized charges for food and gas purchases accumulating to the amount of \$5,373.18 with no payments made.

(13) CID Form 94 (Agent's Investigation Report), 10 December 2021, states Special Agent D__ confirmed additional purchases and that the applicant had not been authorized any travel in the past few months that would have authorized the use of the applicant's GTCC.

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

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

(1) **Applicant provided:** None.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h (1).

(a) Report of Medical Examination, 5 May 2021, the examining medical physician noted in the comments section: Behavioral health and neurology following depression and anxiety.

(b) Report of Medical History, 5 May 2021, the examining medical physician noted in the comments section: Behavioral health for anxiety and depression.

(c) Historical Conditions, shows anxiety disorder in 2020 and alcohol use disorder in 2021.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; legal brief and addendum to legal brief; and an email.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has volunteered at church, being an outstanding husband and father and currently attending barber college with the goal of opening the applicant's own business.

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) 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 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 1, Section VI provides for medical examinations for enlisted Soldiers being separated. Paragraph 1-33 states commanders will ensure that Soldiers initiated for separation under this regulation who are required to obtain a physical examination per 10 USC 1145 and 10 USC 1177 obtain such. In addition to medical examinations, mental status evaluations are required for Soldiers being processed for separation under chapters 10, 13, or 14.

(2) 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.

(3) 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.

(4) 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally are appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(7) Paragraph 10-8b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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

(9) 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 (Certificate of Release or Discharge from Active Duty). It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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.

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 changes to the SPD code to "JFF," and narrative reason to reflect "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 10 years and 11 months. The applicant was charged with two specifications of wrongful use of THC, five specifications of fraud for unauthorized use of the GTCC, false official statement, and being indebted to City Government Card Services. The applicant received FG ROP under Article 15, UCMJ, for wrongfully consuming CBD pills without a valid prescription, and wrongful use of tetrahydrocannabinol (THC). The applicant's DD Form 214 indicates the applicant was discharged on 17 March 2022 under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

c. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

d. The applicant through counsel contends, in effect, the narrative reason for the discharge should be changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents) governs the 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 as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

e. The applicant through counsel contends, in effect, the SPD code should be changed to "JFF." The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 10, is "KFS."

f. The applicant through counsel contends, in effect, the characterization of service is improper due to the government's introduction of limited use evidence. The government introduced into the discharge packet the results of a biochemical test which was coded CO (Competence for Duty/Command Directed) which is Limited Use information as defined in AR 600-85 (The Army Substance Abuse Program) and mandates an honorable characterization of service when separation is directed. However, the Separation Authority approved separation under the provisions of AR 635-200, Chapter 10 which does not authorize an honorable characterization of service. Once the characterization of service is administratively changed to honorable, the narrative reason will become unauthorized. The AMHRR contains:

(1) Biochemical History shows:

- Collection date 4 January 2021, report date 12 February 2021, tested positive for THC during Unit Sweep urinalysis.
- Collection date 27 January 2021, report date 23 February 2021, tested positive for THC during an Inspection Random urinalysis.
- Collection date 18 February 2021, report date 12 March 2021, tested positive for THC during a Command Directed urinalysis
- Diagnosed with alcohol use disorder and substance abuse disorder.

(2) Army Substance Abuse Program, Repeat Positive Detail Report, 22 March 2021, shows the applicant tested positive for THC, during a CO (Command Directed) urinalysis testing, conducted on 18 February 2021.

(3) Developmental Counseling Form, 22 February 2021, and DA Form 2823 (Sworn Statement), 23 February 2021, states the applicant informed the first sergeant on 18 February 2021 that the applicant had been using cannabidiol (CBD) pills since November 2020 for back pain relief in order to exercise for an upcoming height and weight in January 2021.

(4) Analyst notes the applicant's case separation packet included an Army Substance Abuse Program, Repeat Positive Detail Report, 22 March 2021, which reflects a test of "CO," indicating "Competence for Duty/Command Directed/Fitness for duty." The commander directed an individual test based on probable cause evidence obtained from an admission the applicant made to the first sergeant in the applicant's immediate chain of command. The Limited Use Policy does not apply to this test. The evidence of record contains a Developmental Counseling Form, 22 February 2021, and DA Form 2823 (Sworn Statement), 23 February 2021, indicating the applicant had wrongfully used marijuana as a self-medication measure by the applicant's admission. Given this admission, the unit commander had probable cause to direct the urinalysis. Given the preceding, the code on the Army Substance Abuse Program, Repeat Positive Detail Report, 22 March 2021 was likely incorrect and should have been coded PO for "Probable Cause" instead of CO for "Command Directed." Therefore, the rights of the applicant were not prejudiced by the error on file in this case. The evidence did not create a substantial doubt that the discharge would have been any different absent the error.

g. Counsel contends in an addendum to the initial legal brief, in effect, the current AR 635-200 states, if limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under chapter 10. However, AR 635-200 mandates that the separation authority must discount the limited use evidence, in writing, or the honorable characterization of service provisions of AR 600-85 will stand. The separation authority will include a statement in the approval of separation under chapter 10 that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with Department of Defense Instruction 1010.01 and AR 600-85. The separation authority's memorandum does not show that the limited use evidence was discounted as required in order to direct a general or other than honorable separation. This Chapter 10 provision is fairly new so there are no Chapter 10 examples to cite from the ARBA Reading Room, but the precedent for upgrading an applicant due to this same type of prejudicial error has already been established by the ADRB in case AR20190004791 (Chapter 14c, (Serious Offense). In a 5-0 vote on 2 October 2019, the Board stated: "The Board determined the discharge is improper because the command used misconduct from a previous enlistment and the separation authority did not state the earlier misconduct was not considered for the purpose of characterization" and upgraded that applicant from general to honorable even though that applicant committed assault in addition to other misconduct. If the separation authority in the instant case had discounted the limited use evidence in writing, the discharge would be proper and equitable, but the separation authority did not adhere to regulatory guidance. Therefore, this discharge is also improper as proper separation procedures were not followed, the discharge was not within the discretion of the separation authority and the rights of the applicant were not protected.

(1) The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

(2) AR 635-200, paragraph 10-10, Limited use evidence, states due diligence should be exercised to avoid including limited use evidence in a separation action under this chapter, but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under this chapter. The separation authority will include a statement in the approval of separation under this chapter that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with Department of Defense Instruction 1010.01 and AR 600-85.

h. The applicant through counsel contends, in effect, at the end of the applicant's career, the applicant was assigned as a drill sergeant at the Presidio of Monterey which is one of the highest cost-of-living areas in the country. The applicant was denied on-base housing and due to this, the applicant lived over 2 hours away in Merced, CA with the applicant's family and commuted daily to work. During this tour the applicant's father was accused of killing the applicant's mother (the father would be acquitted of this accusation). However, the applicant used the applicant's leave to travel for the applicant's mother's funeral and to the trial to support the applicant's father and was ordered back to work immediately upon the applicant's return

each time. The overwhelming hours at work, long commute, financial strain, and death of the applicant's mother all took a toll on the applicant in the form of in-service anxiety and depression diagnoses (the applicant believes to have been diagnosed with PTSD but does not have a record of this and will rely upon the ARBA Medical Officer for any insight). The applicant began to self-medicate with marijuana due to these behavioral health conditions and unresolved back pain. Due to the loss of rank and money, finances became a major problem for the applicant's family and the applicant used the applicant's GTCC to cover expenses for gasoline or food for the applicant and family. It was an extremely difficult time for the applicant and the applicant paid back all the money owed on the GTCC.

(1) Counsel provided an email on 13 September 2023, which states the applicant does not have military medical records or has visited the Department of Veterans Affairs.

(2) The applicant's AMHRR contains:

(a) Report of Medical Examination, 5 May 2021, shows the examining medical physician noted in the comments section: Behavioral health and neurology following depression and anxiety.

(b) Report of Medical History, 5 May 2021, the examining medical physician noted in the comments section: Behavioral health for anxiety and depression.

(c) Historical Conditions, shows anxiety disorder in 2020 and alcohol use disorder in 2021.

(d) CID Form 94 (Agent's Investigation Report), 19 January 2021, states the applicant admitted to fraudulent use of the applicant's GTCC.

(e) Developmental Counseling Form, 22 February 2021, and DA Form 2823 (Sworn Statement), 23 February 2021, states the applicant admitted to using cannabidiol (CBD) pills for back pain relief.

(f) Report of Mental Status Evaluation, 9 April 2021, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant did not show symptoms associated with PTSD or TBI, nor reported an MST.

(g) Citibank Government Card Statements, for closing dates 11 August, 11 September, 11 October, and 11 November 2021, shows the applicant made unauthorized charges for food and gas purchases accumulating to the amount of \$5,373.18 with no payments made.

i. The applicant through counsel, contends in-service accomplishments warrant clemency and relief. The applicant had an outstanding military career prior to the circumstances that led to the applicant's misconduct and discharge. The applicant served a total of over 10 years in the Army, achieved the rank of staff sergeant (E-6/SSG), served in a peacekeeping mission in Niger and was awarded the ARCOM-2, JSAM, and AAM-3. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

j. The applicant through counsel, contends the applicant has volunteered at church, is being an outstanding husband and father, and currently attending barber college with the goal of opening the applicant's own business. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an

unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

k. 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):**

b. **The applicant presented the following additional contention(s):**

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

10. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses: the applicant held in-service diagnoses of Adjustment Disorder with Anxiety, Anxiety Disorder NOS, and Depressive Disorder NOS. Post-service connected for Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Anxiety, Anxiety Disorder NOS, and Depressive Disorder NOS.

(3) Does the condition or experience excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the in-service diagnoses with documentation reflecting escalation during his last assignment and nexus between psychiatric distress and substance use, the positive UAs for THC are mitigated. However, misusing his GTC, making false statements, and not paying debt are not mitigated by these diagnoses

(4) Does the condition or experience outweigh the discharge? **No.** The applicant's misconduct of misusing a Government Travel Card (GTC), making false statements, and not paying debts are not mitigated by the applicant's diagnoses.

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

(1) The applicant through counsel contends, in effect, the narrative reason for the discharge should be changed to "Secretarial Authority", and the SPD code should be changed to "JFF."

The board considered this contention and determined that a change to the applicant's current characterization of service is not warranted based on the multiple acts of misconduct that are not medically mitigated. The applicant's misuse of a GTC on multiple occasions, making false statements, and not paying debts are not medically mitigated. The applicant requested discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Therefore, no change is warranted.

(2) The applicant through counsel contends, in effect, the characterization of service is improper due to the government's introduction of limited use evidence. The government introduced into the discharge packet the results of a biochemical test which was coded CO (Competence for Duty/Command Directed) which is Limited Use information as defined in AR 600-85 (The Army Substance Abuse Program) and mandates an honorable characterization of service when separation is directed. However, the Separation Authority approved separation under the provisions of AR 635-200, Chapter 10 which does not authorize an honorable characterization of service. Once the characterization of service is administratively changed to honorable, the narrative reason will become unauthorized.

The board considered this contention and determined that the limited use policy does not apply when an enlisted Soldier requests to be Discharged in Lieu of by Court-Martial in accordance AR 635-200, para. 10-10 (28 June 2021). Therefore, the discharge is, at this time, proper and equitable.

(3) Counsel contends in an addendum to the initial legal brief, in effect, the current AR 635-200 states, if limited use evidence is included in the separation action, the requirement that an honorable discharge be given. However, AR 635-200 mandates that the separation authority must discount the limited use evidence, in writing, or the honorable characterization of service provisions of AR 600-85 will stand. The separation authority will include a statement in the approval of separation under chapter 10 that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with Department of Defense Instruction 1010.01 and AR 600-85. The separation authority's memorandum does not show that the limited use evidence was discounted as required in order to direct a general or other than honorable separation. This Chapter 10 provision is fairly new so there are no Chapter 10 examples to cite from the ARBA Reading Room, but the precedent for upgrading an applicant due to this same type of prejudicial error has already been established by the ADRB in case AR20190004791 (Chapter 14c, (Serious Offense)). In a 5-0 vote on 2 October 2019, the Board stated: "The Board determined the discharge is improper because the command used misconduct from a previous enlistment and the separation authority did not state the earlier misconduct was not considered for the purpose of characterization" and upgraded that applicant from general to honorable even though that applicant committed assault in addition to other misconduct. If the separation authority in the instant case had discounted the limited use evidence in writing, the discharge would be proper and equitable, but the separation authority did not adhere to regulatory guidance. Therefore, this discharge is also improper as proper separation procedures were not followed, the discharge was not within the discretion of the separation authority and the rights of the applicant were not protected.

The board considered this contention and the applicant's chain of command not including in the court-martial / Chapter 10 packet language specified in AR 635-200, para 10-10.c. However, and unlike Limited Use policy violations, there is no specified remedy for this category of error. Consequently, the ADRB is under no obligation to automatically upgrade the applicant's UOTH discharge to Honorable. The board determined that a change to the applicant's current characterization of service is not currently warranted because the applicant's diagnoses outlined above in paragraph 10(a) of this document does not outweigh the medically unmitigated offenses of misusing a GTC (on multiple occasions), making false statements, and not paying

debts. Additionally, the applicant requested to be discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Therefore, the discharge is, at this time, proper and equitable.

(4) The applicant through counsel contends, in effect, at the end of the applicant's career, the applicant was assigned as a drill sergeant at the Presidio of Monterey which is one of the highest cost-of-living areas in the country. The applicant was denied on-base housing and due to this, the applicant lived over 2 hours away in Merced, CA with the applicant's family and commuted daily to work. During this tour the applicant's father was accused of killing the applicant's mother (the father would be acquitted of this accusation). However, the applicant used the applicant's leave to travel for the applicant's mother's funeral and to the trial to support the applicant's father and was ordered back to work immediately upon the applicant's return each time. The overwhelming hours at work, long commute, financial strain, and death of the applicant's mother all took a toll on the applicant in the form of in-service anxiety and depression diagnoses (the applicant believes to have been diagnosed with PTSD but does not have a record of this and will rely upon the ARBA Medical Officer for any insight). The applicant began to self-medicate with marijuana due to these behavioral health conditions and unresolved back pain. Due to the loss of rank and money, finances became a major problem for the applicant's family and the applicant used the applicant's GTCC to cover expenses for gasoline or food for the applicant and family. It was an extremely difficult time for the applicant and the applicant paid back all the money owed on the GTCC.

The board considered this contention and determined that the applicant's file contained a document from CID that the applicant made unauthorized additional purchases with his GTCC and the applicant was not authorized travel in the past few months to authorize use of the GTCC. Additionally, the board noted the Army has many legitimate avenues such as ACS available to service members requesting assistance with family issues and financial hardship, and there is no evidence in the official records nor provided by the applicant that such assistance was pursued. The discharge is, at this time, proper and equitable and no changes to the discharge are warranted at this time.

(5) The applicant through counsel, contends in-service accomplishments warrant clemency and relief. The applicant had an outstanding military career prior to the circumstances that led to the applicant's misconduct and discharge. The applicant served a total of over 10 years in the Army, achieved the rank of staff sergeant (E-6/SSG), served in a peacekeeping mission in Niger and was awarded the ARCOM-2, JSAM, and AAM-3.

The board considered the applicant's 10 years of service, overseas missions, grade achieved, and numerous awards received, however the board determined that these factors did not outweigh the applicant's medically unmitigated offenses of misusing a GTC (on multiple occasions), making false statements, and not paying debts. Additionally, the applicant requested to be discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Therefore, the discharge is, at this time, proper and equitable

(6) The applicant through counsel, contends the applicant has volunteered at church, is being an outstanding husband and father, and currently attending barber college with the goal of opening the applicant's own business.

The board considered this contention and acknowledged the applicant's positive post-service accomplishments. However, the board determined that the applicant's post-service accomplishments do not outweigh the seriousness of the applicant's medically unmitigated offenses of misusing a GTC (on multiple occasions), making false statements, and not paying debts.

c. The board determined that the discharge is, at this time, proper and equitable considering the current evidence of record. The applicant has exhausted their appeal options available with the ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the board, the applicant's Adjustment Disorder with Anxiety, Anxiety Disorder NOS, and Depressive Disorder NOS did not excuse or mitigate the offenses of misusing a GTC (on multiple occasions), making false statements, and not paying debts. The misconduct is not mitigated by the applicant's medical diagnoses outlined above in paragraph 10(a). Additionally, the applicant requested to be discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Finally, the absence of required regulatory language in the separation packet does not constitute an impropriety or injustice warranting an upgrade. Neither AR 600-85 nor AR 635-200 specifies a remedy for a command's failure to include regulatory language. Consequently, there is no automatic upgrade for the absence of required regulatory language in a separation packet, and it does not violate the limited use policy. 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.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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:

2/25/2025

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