

1. Applicant's Name: [REDACTED]**a. Application Date:** 21 July 2023**b. Date Received:** 26 July 2023**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

(1) The applicant seeks relief contending, their one year service in Korea was without incidents. Upon returning stateside, their mental health anxiety disorder increased their difficulty to function well under stress and pressure, and their psychiatric medications and dosages was not properly adjusted. The applicant receives 80% service-connected disability through Veterans Affairs (VA), as 70% is contributed to their mental health, while the rest is related to physical ailments. A self-authored letter to their Troop Commander provides the applicant was concerned about their impending administrative separation under Chapter 14-12B (Patterns of Misconduct) and felt this chapter would be detrimental to the applicant and their family. The family was already receiving Women, Infants and Children (WIC) Program vouchers to assist with their child's nutritional needs and feared this type of separation would increase the difficulty in providing for their child. Their spouse was discharged from the Army under Chapter 5-17, for consequences of their actions related to their BH disorder. Since the spouse's separation, they have been unable to obtain a job. Without adequate income as a civilian, acquiring and maintaining affordable health insurance will be extremely difficult. With the family's chronic health problems, requiring a lifetime of medication regimens and the discharge would further lead to a negative impact on the family.

(2) In January 2007, the applicant was diagnosed with bipolar disorder. They were not further evaluated until further neuropsychological testing was suggested in order to determine a proper medical diagnosis of Bipolar Disorder or Asperger's Syndrome, at their separation physical. Their chain of command continued to document, through counseling statements, the command's perception of the applicant's difficulties performing as a Soldier. According to AR 635-200, Chapter 14-12B, a Soldier experiencing difficulties in their current situation must be given an adequate opportunity for rehabilitation by their command. This opportunity may include a transfer to a new section within the current unit, or to a new unit altogether. Multiple times they requested, by proper use of their chain of command, reassignment to another section of the pharmacy, hoping this would improve the applicant's morale, thus improving their work ethic. Each time a request was made, it was denied by their chain of command.

(3) Soon it became difficult for the applicant to continue working in the outpatient pharmacy while the applicant watched other Soldiers expanding their skills and careers by transferring to other areas of the pharmacy. This was detrimental to the improvement of their skills, knowledge base, and their career. Continuous counseling statements relating to their interactions with their superiors hindered advancement and could have been avoided if they had been given the opportunity of succeeding elsewhere. It was unfortunate that rehabilitation efforts were not initiated in a timely manner and referrals were not made by their chain of command to assist them in reaching the root of their problems; therefore, hindering any progress, which could have been initiated towards their rehabilitation.

(4) Regardless of the ultimate diagnosis, their behavioral problems, which resulted in recurring counseling statements, can be directly correlated to symptoms of Bipolar Disorder, as well as Asperger's Syndrome. For example, if Bipolar Disorder were a correct diagnosis, the manic and depressive stages associated with this disorder could explain the erratic behavior perceived by their superiors as intentional disrespect. On the other hand, if Asperger's Syndrome was a correct diagnosis, the erratic behavior can be explained by the lack of appropriate social and emotional behavior commonly displayed by those affected with this syndrome. Although they have been diagnosed with Bipolar disorder, the applicant was then going through a monthlong testing for Asperger's syndrome per the advice of their physician. Until a proper diagnosis is reached, proper treatment cannot be implemented, resulting in appropriate behavioral modifications.

(5) Additionally, an appeal to the Deputy Commander for Clinical Services (DCCS) was authored by the applicant provided with their renewed stabilization achieved through more medication and counseling, the applicant felt they could perform well enough to continue to be a Soldier in the Army. The applicant contends the Army has made their depression worse since joining, despite the doctors saying their depression was not aggravated by the service. The dosage of their antidepressants have increased during this time and more were needed to keep them feeling well enough to cope with the stresses of military life. This should be substantial evidence of their worsening symptoms.

(6) The applicant disagreed with the Commander's Performance and Functional Statement submitted with their MEB. Their commander stated that the applicant did not perform duties in their MOS and was not authorized to handle medication. This was not an accurate representation of the applicant at all. They worked in the refill pharmacy at the time this was written, allowed to fill prescriptions and therefore, the applicant handled medications to complete the job. Indeed, at one time, the applicant was not allowed in the pharmacy at all, due to taking overdose of Flexeril, as a cry for help, which got the attention of the leaders over them. They chose this drastic measure because no pharmacy NCOs would take them seriously when the applicant told them they really needed some serious help. They have made tremendous improvement from a mental standpoint and now they are allowed to work in the pharmacy once more. The commander also stated that they do not complete tasks to sufficient quality and time standards. While here in Fort Benning, the applicant has not received any negative counseling statements in reference specifically to not completing tasks to standard or time.

(7) Although they have received numerous counseling statements on not interacting with people appropriately suffering from Pervasive Developmental Disorder. This type of autism acquired from birth does not make it difficult at times to communicate effectively with those around them. Yet, with NCO's who understand their condition and have the patience needed, they can build a successful relationship with them. They do not always perceive the world in the way that others do. This different thought pattern cause problems sometimes. But if the other person is willing to help them more, to fully understand what they are thinking and listen to their concerns, it would be easier for the applicant to deal with them. The applicant made mistakes in their Army career such as disrespect and insubordination. The applicant is remorseful for their actions and they have learned some great lessons from these experiences, now more careful before acting on a thought.

b. Board Type and Decision: In a records review conducted on 7 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Intimate Partner Violence (IPV) and harassment experienced outweighed the applicant's domestic altercation, failure to report (FTR), disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for personal use while in the patient

window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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: Pattern of Misconduct / AR 635-200, Chapter 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 23 November 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 20 September 2011

(2) Basis for Separation: domestic altercation; failure to report to duty at Outpatient Pharmacy; disrespect toward noncommissioned officers (NCOs); failure to follow chain of command/NCO support channel; improper treatment of patients/patients care; failure to follow lawful orders; using government telephones for person use while in the patient window in front of patients; disrespect towards a superior commissioned officer and failure to obey a direct order from a superior commissioned officer on several occasions; continually displayed disrespect toward leadership while being counseled on their behavior; failure to follow department instruction; will disobeyed NCOS; disrespectful in language towards noncommissioned officers during morning PT; willfully disobeyed their department NCOIC; disrespect towards coworkers while assigned to department of pharmacy on several occasions; overall performance is substandard

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

(4) Legal Consultation Date: 22 September 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 4 November 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 January 2007 / 5 years

b. Age at Enlistment / Education / GT Score: 29 / 3 Years of College / 117

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 68Q10 Pharmacy Specialist / 4 years, 10 months, 6 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None (21 November 2007 – 5 November 2008)

f. Awards and Decorations:

Army Achievement Medal (3rd Award)
 Army Good Conduct Medal
 National Defense Service Medal
 Korea Service Medal
 Global War on Terrorism Expeditionary Medal
 Army Service Ribbon
 Overseas Service Ribbon

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 18 January 2007, the applicant enlisted in the Regular Army (RA) for 5 years as a PFC (E-3). The Enlisted Record Brief provides a one year tour in Korea from 21 November 2007 – 5 November 2007; on 18 November 2008, they were promoted to SPC (E-4); they were awarded three Army Achievement Medals and a Good Conduct Medal; on 9 June 2010, they were demoted to PFC; and on 5 January 2011, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA).

(2) On and between 29 May – 16 September 2009, the applicant received eight counseling's for various event-oriented acts of misconduct such as domestic altercation, failure to obey lawful orders, disrespectful conduct toward their NCOs, improper treatment of patients/patient care, and improper use of government telephone. The counseling received on 21 August, for failing to obey a lawful order, provides written remarks from the applicant. On 3 September, they disagreed with the improper use of the phones counseling and provided a statement. Additionally, five of the counseling's only provide the first page and do not indicate whether the applicant agreed/disagreed/authored a statement.

(3) On 6 January 2010, the applicant accepted nonjudicial punishment for five specifications of Article 91, UCMJ, for the following listed below. They did not appeal. The punishment imposed a reduction to PV2 (E-2), suspended, to be automatically remitted if not vacated before 6 May 2011.

(a) On or about 10 November 2010, the applicant, did at or near Fort Benning, GA, willfully disobeyed a lawful order from SSG M_ (NCOIC Outpatient Pharmacy), a noncommissioned officer, then known by the applicant to be a NCO, to go to the back of the break room, an order which it was their duty to obey.

(b) The same day, was disrespectful in language toward the NCOIC, Outpatient Pharmacy, a superior NCO, then known by the applicant as such in the execution of their office, by saying to the applicant, "You know I came in at 0730 and you want me to stay until Outpatient Pharmacy closed, I will have to talk to MSG H_ about it," or words to that effect.

(c) They were disrespectful in language toward the NCOIC Outpatient Pharmacy, a superior NCO, then known by the applicant as such in the execution of their office, by saying to them, "Later," or words to that effect, then hung up the phone.

(d) On or about 13 December 2010, the applicant was disrespectful in language and deportment toward NCOIC Outpatient Pharmacy, a superior NCO, then known by the applicant as such in the execution of their office, by continuing to yell and raising the applicant's voice at the NCOIC, while standing at parade rest.

(e) The same day, they willfully disobeyed a lawful order from MSG H_ (NCOIC, Department of Pharmacy), a noncommissioned officer, then known by to be a noncommissioned officer, to "At Ease", an order which it was the applicant's duty to obey.

(4) On 20 May 2010, the applicant was counseled for having failed to obey a lawful order from a commissioned officer. On 8 June 2010, the applicant accepted nonjudicial punishment for four specifications of Article 91, and two specifications of Article 90, UCMJ, for the following listed below. They appealed without additional matters, in which the appeal was denied and the punishment imposed a reduction to PFC (E-3).

(a) On or about 20 May 2010, the applicant did, at or near Martin Army Community Hospital, Fort Benning, GA, behave themselves with disrespect toward CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, by saying to them, "I need to check with my NCO first," or words to that effect and proceeded to walk in the opposite direction away from the pharmacy. This was in violation of Article 89, UCMJ.

(b) The same day, the applicant behave themselves with disrespect toward CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, by rolling their eyes and saying to CPT, "I'm fine right here," or words to that effect, when told by CPT to report to window #6 to backfill for someone that had prescriptions to fill.

(c) On or about 21 May 2010, they did behave themselves with disrespect toward CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, by saying to CPT, "I already spoke to my NCO what is the problem," or words to that effect, while on the phone asking to be replaced by someone.

(d) The same day, the applicant behaved themselves with disrespect toward CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, by saying to CPT, "I only have 2 minutes before clocking out for the day so it wasn't worth opening a window," or words to that effect, when told by CPT K_ "before your shift was over to work window #5" or words to that effect.

(e) On or about 20 May 2010, the applicant willfully disobeyed a lawful command from CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, to backfill a window at the Pharmacy, or words to that effect. This was in violation of Article 90, UCMJ.

(f) The same day the applicant willfully disobeyed a lawful command from CPT K_, their superior commissioned officer, then known by the applicant to be their superior commissioned officer, "to go to window #6 and backfill for someone that had prescriptions to fill," or words to that effect.

(5) Nine Developmental Counseling's with additional statements for the record, dated from 22 July 2010 – 5 January 2011, provides the applicant was counseled for numerous event-oriented acts of misconduct including failure to obey lawful orders, disrespectful conduct toward their NCOs and a commissioned officer, and following their inpatient rehabilitation, they were removed from their Pharmacy tech duties. Four of the instances of failure to obey lawful orders and disrespect toward their NCOs and a commissioned officer, the applicant disagreed and provided statements. Additionally, two of the counseling's are missing the second page which shows the narrative of the counseling's.

(6) On 20 December 2010 and 21 January 2011, the applicant completed their medical history and examination at Martin Army Community Hospital, Fort Benning, GA, and detailed their medical and treatment history. The applicant at the time was prescribed the following medications: Amitriptyline, Cyclobenzaprine, Valacyclovir, and Venlafaxine. Their diagnoses were summarized as Depression and chronic lower back pain, with the provider having recommended for the applicant to continue Effexor (Venlafaxine), continue to follow up with BH counselor as directed, and continue to back strengthening exercises as directed by physical therapy.

(7) On 20 September 2011, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12B, Pattern of Misconduct, for the above misconduct occurrences and recommended for a General (Under Honorable Conditions) characterization of service. The commander's report further noted, the applicant possessed "no potential for useful service under conditions of full mobilization." The applicant acknowledged receipt of their separation notice.

(8) On 22 September 2011, the applicant elected to consult with legal and elected not to submit a statement on their behalf. Defense counsel endorsed their election, acknowledging the applicant was counseled on the possible effects of their separation and the rights available to them. On 28 September 2011, the battalion and brigade commanders concurred with the recommended actions.

(9) On 4 November 2011, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service. On 9 November 2011, their separation orders were issued and later amended on two occasions. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 23 November 2011, with 5 years, 2 months, and 7 days of total service. They were not available for signature and the applicant has not completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** A VA Rating Decision, dated 31 May 2018, provides, in effect, the applicant's evaluation of their Anxiety Disorder, unspecified, with Major Depression Disorder, recurrent, moderate (previously Mood Disorder with Generalized Anxiety Disorder, Attention Deficit Disorder, Asperger's Disorder (also claimed as depression)), was increased to a combined 80% service-connected disability effective 11 April 2018.

(2) AMHRR Listed:

(a) On 14 February 2011, the applicant completed a mental status evaluation at Martin Army Community Hospital's Behavioral Health Clinic, Fort Benning, GA, reflecting

diagnoses of Bipolar Disorder, Anxiety Disorder NOS (AXIS I) and Personality Disorder NOS with Schizoid and Borderline features (AXIS II). The provider stated the applicant reported a history of enlisting in the Army in 2005 and was discharged for being unable to adapt to military life. The applicant was diagnosed with bipolar disorder prior to entering the Army and went into the National Guard in Nebraska. They attempted to enter again two years later and was again sent to basic and, with much help from their drill instructors (DI), graduated and was sent to Fort Sam Houston, TX. They reported at least one DI knew the applicant was taking anti-depressants and told the applicant to do what they needed to do. The applicant was diagnosed there with Bipolar and carried that diagnosis for a number of years. Recently, they were diagnosed with depression and their physician has arranged a consult for a neuropsychological battery to rule out Asperger's Syndrome.

They screened negative for TBI and PTSD. They were mentally responsible, able to distinguish right from wrong, and had the mental capacity to understand and participate in administrative/board proceedings. They were **NOT** psychiatrically cleared for any administrative action deemed necessary by the command. They did not meet accession criteria at the time of enlistment based on a past history of a diagnosis of bipolar disorder that existed prior to service.

The provider indicated the applicant would be referred for a CH3 Medical Evaluation Board (MEB) based on a psychiatric condition that existed prior to service. Their diagnosis appears to have existed prior to their reenlistment in the Army. While they were not presenting as suicidal/homicidal at that time, the applicant was advised not to drink or be allowed access to firearms/ammunition.

(b) On 16 – 28 February 2011 the applicant was admitted to inpatient care at The Bradley Center, Columbus, GA, for rehabilitation, as the applicant's poor coping skills in dealing with stressors and depression needed a higher level of care as compared to outpatient. Upon having stabilized, the applicant was discharged to outpatient care, noting further discharge plans would depend upon the applicant's response to their current treatment then.

(c) A Medical Evaluation Board Proceedings, dated 22 August 2011, reflects the applicant's medically unacceptable conditions: Bipolar Disorder (Existed Prior to Service (EPTS) IAW AR 40-501, Chapter 3-32, with VA diagnosis as Mood Disorder NOS, Generalized Anxiety Disorder; Pervasive Development Disorder, NOS [subthreshold symptoms of Asperger's disorder] EPTS IAW AR 40-501, Chapter 3-30j or Chapter 2-27, with VA diagnosis as Asperger's Disorder. The board recommended the applicant be referred to a Physical Evaluation Board (PEB). The applicant appealed with a self-authored statement and after consideration, the board confirmed the original findings.

(d) On 17 October 2011, at the request of the Commanding General, Chief of Behavioral Health, Martin Army Community Hospital, Fort Benning, GA, provides a review of the mental health diagnosis as a potential contribution for the misconducts allegedly perpetrated by the applicant. The applicant was well known to this provider, Department of Behavioral Health, and documentation from numerous BH providers.

There is a diagnosis of Bipolar Not Otherwise Specified (NOS) that is documented to have existed prior to service. The nature of Bipolar disorder has significant variability in the intensity and impairment. They did not appear to meet the criteria for full Bipolar I or II and the VA had recommended a diagnosis of Mood Disorder NOS. Their records and the provider having evaluated the applicant provided little mention to the significant personality traits that fall within the cluster of a borderline personality. Their constellation of symptoms appear to be persistent and pervasive throughout their military career, with frantic efforts to avoid feelings of

abandonment from superiors/close relationships.

At no time were there any indications that the applicant has been psychotic or lost their capacity to make decisions. It appears that all of their actions and allegations of disrespect are volitional. Bipolar, Aspergers, and Attention Deficit Disorder, all place a Servicemember at significant disadvantage but unless there is psychosis, do not dictate action or are an excuse for being disrespectful. The Servicemember has attempted interventions from BH since 2007 and has not remitted with the usual psychotherapy and psychopharmacological treatments. This is one more indicator that their personality and lack of coping skills is a significant portion of their occupational impairment.

The applicant's inability to adapt to the military lifestyle and structure were revealed in 2005 when they were discharged from the National Guard at six weeks, for a failure to adapt. Contributions from their mental diagnosis could exacerbate their low self-esteem, make them more irritable or impulsive but to date, they continued to appear to have capacity and an intact judgment of right and wrong. Chief of BH recommended the applicant be chaptered for misconduct and held accountable for their actions.

On or about 14 – 23 November 2011, the applicant was hospitalized at Martin Army Community Hospital in the Intensive Care Unit. The applicant's father traveled there and safely transported the Soldier and their family from the installation.

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Two Self-Authored Statements; Veterans Affairs (VA) Summary of Benefits and Rating Decision; Hospitalization Records from The Bradley Center; Five Character Letters provided the following:

a. Their previous Chief of Pharmacy Dept contends the applicant's medical challenges were not congruent to their military career and be considered as an influence on the applicant's inappropriate behavior which led to their discharge.

b. SGT O_ who worked in support pharmacy and has been on active duty for 17 years, contends the applicant inquired about how to improve themselves as Soldiers came to them for help and guidance. SGT saw the applicant's potential and felt they needed good leadership, to be taken care of, and listened to. The applicant worked well on the support side of the pharmacy and did everything well there. They were awarded an Army Achievement Medal for their dedication and completion of her assignment. SGT personally has heard many good things from their civilian staff when the applicant helped in their section and requested the applicant to come and work with them, as the applicant understood the concept of being a team player.

c. Ms. S_ contends, while in support pharmacy, the applicant always worked hard, took initiative to do things that needed to be done without being told to do so, and put a whole new meaning to the word teamwork. The applicant completed with completion of bulk drug orders, entered and filling prescriptions for deploying service members, among other duties during their brief stay. While Ms. S_ was absent, the applicant was able to collect, enter and fill prescriptions for approximately 300 deploying Soldiers per week, ensuring they were checked by a pharmacist, which required going to the Conus Replacement Center every Thursday and dispensing the medications to each individual servicemember. The applicant assisted in the registration in Tricare Mail Order Pharmacy (TMOP) of deploying servicemembers. The applicant was very knowledgeable about the entire Deployment Prescription Program process, which involved continuous contact with several Physician Assistants who write these prescriptions. The applicant was never disrespectful to them or anyone that worked there, as the applicant portrayed the traits of a good Soldier and it was pleasure to work with the

applicant.

d. Mr. W_ contends the applicant deserves recognition as they have contributed a great deal to the success of support pharmacy in the month of September. The applicant's hard work, determination, dedication, and selfless service to support pharmacy was the perfect balance that led to the success of at least two sections during the preparation for the end of the fiscal year. They showed initiative and attention to detail that reflected greatly on support pharmacy. The applicant took great initiative in the absence of leadership while SGT O_ was on leave. It was greatly appreciated that the applicant was always willing to go the extra mile to ensure the success of the task at hand.

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

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

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

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

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

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

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

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

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

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

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

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

(4) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions or a Pattern of Misconduct.

(5) Chapter 14 established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) 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.

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12B, Pattern of Misconduct.

g. 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

h. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

(1) Article 89 (disrespect toward superior commissioned officer) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for one year.

(2) Article 90 (willfully disobeying lawful order of superior commissioned officer) states in the subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

(3) Article 91 (willfully disobeying a noncommissioned officer) states in the subparagraph, the maximum punishment consists of bad conduct discharge, forfeiture of all pay and allowances, and confinement for one year.

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

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

a. The applicant requests an upgrade to Honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA, promoted to SPC, completed one year overseas (Korea), and served for 3 years, 11 months, and 17 days prior to having been flagged for involuntary separation. The applicant received 18 event-oriented

counseling's and two NJPs for various acts of misconduct. As a result of the second NJP, they were demoted to PFC and separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12B, Patterns of Misconduct, with a General (Under Honorable Conditions). They elected to consult with legal and elected not to submit a statement on their behalf. Defense counsel endorsed their election, acknowledging the applicant was counseled on the possible effects of their separation and the rights available to them.

(1) The applicant had two inpatient rehabilitation stays in February and November 2011, due to their mental health. Their medical diagnoses were found medically unacceptable through a MEB and was referred to a PEB for: Bipolar Disorder (VA diagnosed as Mood Disorder NOS, Generalized Anxiety Disorder) and Pervasive Development Disorder, NOS [subthreshold symptoms of Asperger's Disorder] (VA diagnosed as Asperger's Disorder).

(2) The applicant receives an 80% service-connected disability rating through the VA for Anxiety Disorder, unspecified, with Major Depression Disorder, recurrent, moderate (previously Mood Disorder with Generalized Anxiety Disorder, Attention Deficit Disorder, Asperger's Disorder (also claimed as depression)).

(3) They served 4 years, 10 months, and 6 days of their 5 year contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. 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: The primary in-service diagnoses were Bipolar Disorder, Asperger's Disorder/Atypical Pervasive Development Disorder, and Personality Disorder. Subsumed diagnoses were variations of Adjustment Disorder, Depression, Mood Disorder, and Generalized Anxiety Disorder (GAD). Applicant was the victim of IPV on at least three confirmed occasions. Additionally, BCT Command reported applicant was "harassed horrifically." Post-service connected for Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the primary in-service diagnoses were Bipolar Disorder, Asperger's Disorder/Atypical Pervasive Development Disorder, and Personality Disorder. Subsumed diagnoses were variations of Adjustment Disorder, Depression, Mood Disorder, and

GAD. Applicant was the victim of IPV on at least three confirmed occasions. Additionally, BCT Command reported applicant was "harassed horrifically."

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the diagnoses and related symptoms mitigate the basis for separation. The applicant also has multiple incidents of IPV victimization with peer harassment, labeled horrific, for consideration.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's IPVs and harassment experienced outweighed the domestic altercation, FTR, disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for person use while in the patient window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation.

b. Response to Contention(s):

(1) The applicant seeks relief contending, their one year service in Korea was without incidents. Upon returning stateside, their mental health anxiety disorder increased their difficulty to function well under stress and pressure, and their psychiatric medications and dosages was not properly adjusted. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's IPV and harassment experienced outweighed the applicant's domestic altercation, failure to report (FTR), disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for person use while in the patient window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation.

(2) The applicant contends an 80% service-connected disability through Veterans Affairs (VA), as 70% is contributed to their mental health, while the rest is related to physical ailments. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's IPV and harassment experienced outweighed the applicant's domestic altercation, failure to report (FTR), disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for person use while in the patient window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's IPV and harassment experienced outweighed the applicant's domestic altercation, FTR, disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for person use while in the patient window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's IPV and harassment experienced outweighed the applicant's domestic altercation, FTR, disrespect toward noncommissioned officers (NCOs), failure to follow chain of command/NCO support channel, improper treatment of patients/patients care, failure to follow lawful orders, using government telephones for person use while in the patient window in front of patients, disrespect and failure to obey a direct order from a superior commissioned officer on several occasions, continually displayed disrespect toward leadership, failure to follow department instruction, willfully disobeyed NCOs, disrespectful in language towards NCOs and officers during morning PT, willfully disobeyed their department NCOIC, disrespect towards coworkers while assigned to department of pharmacy on several occasions, and overall substandard performance basis for separation. Thus, the prior characterization is no longer appropriate.

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

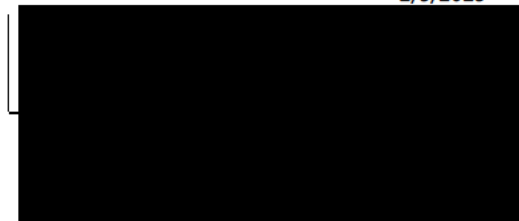
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200, Chapter 15

Authenticating Official:

2/5/2025



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