

**1. Applicant's Name:**

- a. **Application Date:** 8 October 2023
- b. **Date Received:** 26 October 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 general (under honorable conditions). The applicant through counsel requests an upgrade to honorable and a narrative reason change to expiration of term of service.

b. The applicant through counsel seeks relief contending, in effect, to correct an inequity for three reasons. First, the applicant served their country honorably in combat. Second, the applicant was suffering from serious mental health issues at the time of the misconduct because the applicant was suffering deeply from their experiences in Iraq and Afghanistan. Third, the applicant's PTSD mitigates, excuses, and outweighs their discharge. Numerous provisions of the Wilkie memorandum entitle the applicant to relief.

(1) After the applicant's separation, the applicant spent almost 2 years in civilian confinement as a result of their threatening letters. Ultimately, the applicant was found not guilty by reason of insanity. This legal outcome is compelling evidence that the applicant was suffering from a serious mental health condition at the time that the applicant sent the letters. While committed to a civilian hospital as a result the applicant's plea of not guilty by reason of insanity, the applicant began receiving psychiatric help. The applicant was released from the hospital following a finding that they did not pose a substantial risk to the public (see enclosure 8).

(2) The applicant was granted a 70 percent disability rating from the VA.

(3) A comparable case previously decided by the Army Board for Correction of Military Records (ABCMR) can be located at Docket AR20190000162. The applicant in Docket AR20190000162, deployed to Iraq, served over 3 years, and was separated for multiple failures to go to their appointed place of duty, being disrespectful to a noncommissioned officer, and arrest for simple battery. This applicant was diagnosed with PTSD. The ABCMR "found sufficient evidence of in-service mitigation to overcome the misconduct to justify a clemency determination," and upgraded this applicant's characterization of service from general (under honorable conditions) to honorable.

c. **Board Type and Decision:** In a telephonic appearance conducted on 03 June 2024, and by a 5-0 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 3 December 2010

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 27 October 2010

**(2) Basis for Separation:** The applicant was informed of the following reasons: Between on or about 15 July 2010 and on or about 15 August 2010, the applicant wrongfully communicated to Dr. G\_\_R\_\_, threats to cause bodily harm to the said Dr. R\_\_. The applicant received an Article 15 for this misconduct on 24 September 2010. Between on or about 1 and 30 August 2010, the applicant wrongfully communicated to S\_\_ M\_\_, threats to cause bodily harm to the said M\_\_.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 28 October 2010

**(5) Administrative Separation Board:** On 28 October 2010, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a general (under honorable conditions) discharge.

**(6) Separation Decision Date / Characterization:** 18 November 2010 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 9 June 2010 / 3 years and 25 weeks

**b. Age at Enlistment / Education / GT Score:** 34 / bachelor's degree / 97

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / None / 14 years, 2 months, and 24 days

**d. Prior Service / Characterizations:** USN, 30 October 1995 - 11 August 1999 / HD  
ARNG, 31 March 2004 - 24 April 2005 / HD  
AD, 16 August 2004 - 24 April 2005 / HD  
(Concurrent Service)  
ARNG, 22 November 2005 - 30 March 2008 / HD  
AD, 25 April 2005 - 30 September 2005 / HD  
(Concurrent Service)  
AD, 17 February 2006 - 12 March 2007 / HD  
(Concurrent Service)  
(Break in Service)  
ARNG, 18 August 2008 - 8 June 2010 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (19 April 2006 - 18 February 2007); Iraq (15 October 2003 - 31 March 2005)

**f. Awards and Decorations:** NMUC, NGCM, NDSM-BS, NDSM, ACM-2CS, GWOTEM, GWOTSM, ASR, OSR, AFRM-M, NSSDR, NATOMDL

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

(1) Minot Police Department Uniform Incident Report, 31 July 2010, shows Dr. R\_\_ reported receiving five threatening letters from the applicant.

(2) Minot Police Department letter for Captain S\_\_ R\_\_, 23 August 2010, shows Dr. R\_\_ requested their case be referred to Captain R\_\_ to be handled in military court.

(3) Military Police Report, 30 August 2010, shows the applicant was apprehended for: Communicating a Threat - By Mail (On Post).

(4) Receipt For Inmate or Detained Person, 30 August 2010, shows the applicant was charged with communicating threats.

(5) The applicant's DA Form 2823 (Sworn Statement), 30 August 2010, states the applicant wrote the letters to Dr. R\_\_ with the idea of justice in mind. Dr. R\_\_ and the university stole \$52,500 of the applicant's money. Dr. R\_\_ told the applicant that a college education was supposed to create a better future, but it has done nothing but create problems and the applicant wanted their money back.

(6) CG Article 15, 24 September 2010, for wrongfully communicating to Dr. R\_\_ several threats by mail to injure Dr. R\_\_ by doing bodily harm between on or about 31 July and 3 August 2010. The punishment consisted of a reduction to E-3; forfeiture of \$448.00; extra duty and restriction for 14 days; and an oral reprimand.

(7) On 18 October 2010, the applicant was flagged for involuntary separation/field initiated (BA) effective 18 October 2010.

(8) The applicant's Enlisted Record Brief, 18 April 2010, shows the applicant was reduced from E-4 to E-1 effective 24 September 2010.

(9) On 20 October 2010, the applicant was counseled for recommendation for a chapter 14-12.

(10) Personnel Action form shows the applicant's duty status changed from "Present for Duty" to "Confined by Civil Authorities," effective 10 November 2010.

**i. Lost Time / Mode of Return:** 24 days (CCA, 10 November 2010 - 3 December 2010) / Apprehended by Civil Authorities

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

**(1) Applicant provided:**

(a) Memorandum, Headquarters Dwight David Eisenhower Army Medical Center, Memorandum for Record regarding psychiatric evaluation of (Applicant), 4 November 2010, shows the applicant was hospitalized from 29 September - 20 October 2010. The applicant was admitted for evaluation of agitation. The applicant has a history of depression in the past. In 2006, the applicant was treated for anxiety and depression while deployed. The applicant has a

high risk for a recurrence of depression and anxiety symptoms. The applicant was diagnosed with: Major Depression, recurrent.

(b) Progress Notes, Fargo VA Health Care System, 16 May 2012, shows a diagnosis of PTSD and Major Depression, recurrent.

(c) Discharge Summary, Fargo VA Health Care System, 13 January 2017, shows a diagnosis of Major Depression, moderate, recurrent.

(d) VA Service-Connected Disabilities letter, 22 February 2024, shows the applicant was rated 70 percent disabled for PTSD.

**(2) AMHRR Listed:**

(a) Memorandum, Headquarters Dwight David Eisenhower Army Medical Center, Certificate of Psychiatric Evaluation, 20 August 2010, shows the applicant was diagnosed with Major Depression, recurrent.

(b) Report of Mental Status Evaluation, 19 October 2010, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with Major Depression, recurrent.

(c) Report of Medical Examination, 19 October 2010, the examining medical physician noted the applicant's medical conditions in the comments section: Major Depression and Adjustment Disorder with Anxious Mood.

(d) Report of Medical History, 19 October 2010, the examining medical physician noted the applicant's medical conditions in the comments section: Currently being seen at Dwight David Eisenhower Army Medical Center for depression.

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

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; Legal Brief with all listed enclosures 1 through 11 (includes three DD Forms 214, three VA letters, medical progress notes).

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

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming 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.** 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 that agency.

**c.** 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.

**d.** 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.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

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

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

(3) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(4) Paragraph 14-3 prescribes 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.

(5) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(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 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 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 through counsel requests an upgrade to honorable and a narrative reason change to Expiration of Term of Service. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows between the applicant's service in the Navy, ARNG, and Regular Army the applicant served 14 years, 2 months, and 24 days including deployments to Afghanistan and Iraq. The applicant received a CG Record of Proceedings under Article 15, UCMJ, for wrongfully communicating to Dr. R\_\_ several threats to cause bodily harm and was reduced in grade from E-4 to E-3. On 10 November 2010, the applicant was placed in civilian confinement. The applicant was discharged on 3 December 2010 under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

c. The applicant through counsel requests the narrative reason for the discharge to be changed to Expiration of Term of Service. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." 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.

d. The applicant through counsel contends, in effect, the applicant served their country honorably in combat. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

e. The applicant through counsel contends, in effect, the applicant was suffering from serious mental health issues at the time of the misconduct because the applicant was suffering deeply from their experiences in Iraq and Afghanistan. The applicant's PTSD mitigates, excuses, and outweighs their discharge.

(1) The applicant provided:

(a) Memorandum, Headquarters Dwight David Eisenhower Army Medical Center, Memorandum for Record regarding psychiatric evaluation of (Applicant), 4 November 2010, shows the applicant was diagnosed with: Major Depression, recurrent.

(b) Progress Notes, Fargo VA Health Care System, 16 May 2012, shows a diagnosis of PTSD, Major Depression, recurrent.

(c) Discharge Summary, Fargo VA Health Care System, 13 January 2017, shows a diagnosis of Major Depressive disorder, moderate, recurrent.

(d) VA Service-Connected Disabilities letter, 22 February 2024, shows the applicant was rated 70 percent disabled for PTSD.

(2) The applicant's AMHRR contains medical documentation from 2010 which supports a diagnosis of in-service depression. The applicant underwent a mental status evaluation on 19 October 2010, it was determined the applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

f. The applicant through counsel contends, in effect, after serving almost 2 years in civilian confinement, a federal court found that the applicant not guilty by reason of insanity following a forensic examination that shows the applicant's mental health struggles were severe at the time the applicant wrote the letters that led to their discharge from the Army. This shows how unjust it was for the Army to continue to punish the applicant for this conduct when a federal court decided many years ago that the applicant should not be held responsible for this misconduct. The applicant through counsel provided enclosure 8 - court documents, Joint Stipulation, 10 February 2010, and Federal Court Order, 7 March 2012, states in part, pursuant to a plea agreement with the government on 12 July 2011, the applicant entered a plea of not guilty only by reason of insanity. The court accepted the plea and ordered that the defendant be committed to the custody of the Attorney General for hospitalization and treatment and examination. After being evaluation, on 7 March 2012, the court found that the applicant had satisfied their burden of proof by clear and convincing evidence that their release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease and discharged the applicant.

g. The applicant through counsel contends, that a comparable case previously decided by the Army Board for Correction of Military Records (ABCMR) can be located at Docket AR20190000162. The applicant in Docket AR20190000162, deployed to Iraq, served over 3 years, and was separated for multiple failures to go to their appointed place of duty, being disrespectful to a noncommissioned officer, and arrest for simple battery. This applicant was diagnosed with PTSD. The ABCMR "found sufficient evidence of in-service mitigation to overcome the misconduct to justify a clemency determination," and upgraded this applicant's characterization of service from general (under honorable conditions) to honorable. 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.

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



**9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE:** In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

- a. **The applicant submitted the following additional document(s):** None
- b. **The applicant presented the following additional contention(s):** None
- c. **Counsel / Witness(es) / Observer(s):** Counsel

**10. BOARD DISCUSSION AND DETERMINATION:**

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

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

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Major Depressive Disorder (MDD) and Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that in reviewing the misconduct, details surrounding the events, and behavioral health diagnoses and status at the time of the misconduct, it is unlikely the applicant's current service-connected condition of PTSD was contributory. Specifically, the applicant's actions were not spontaneous or unpremeditated, choice of victim was not accidental or chance, reflected motivation and rationalization, did not relate to his traumatic event or stressor suggesting a re-enactment, and the applicant could coherently speak of the events prior to, during, and after. While the applicant submitted court paperwork noting he was not guilty by reason of insanity and placed in a hospital, the related evaluation is absent as is the release evaluation. Accordingly, all the documentation available at the time of the misconduct, outpatient and inpatient, indicate he was of sound mind. Additionally, all collateral in the separation packet indicate he was of sound mind irrespective of the anger and aggression. Accordingly, while liberal consideration was applied, the applicant's misconduct is not mitigated at this time.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the Board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder (MDD), PTSD and Anxiety Disorder outweighed the basis for applicant's separation - possession and distribution of a controlled substance, treats to cause bodily harm, wrongful communication - for the aforementioned reasons.

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

(1) The applicant through counsel contends, in effect, the applicant served their country honorably in combat. The board considered this contention and the totality of the applicant's service record, the applicant's statement, and published Department of Defense guidance for liberal consideration but due to the serious, repeated and the nature of the misconduct (possession and distribution of a controlled substance, treats to cause bodily harm, wrongful communication), the applicant's discharge was appropriate because the applicant diminished the quality of service below that meriting an honorable discharge at the time of separation. Therefore, an upgrade is not warranted at this time.

(2) The applicant through counsel contends, in effect, the applicant was suffering from serious mental health issues at the time of the misconduct because the applicant was suffering deeply from their experiences in Iraq and Afghanistan. The applicant's PTSD mitigates, excuses, and outweighs their discharge. The board liberally considered this contention, ultimately the board determined that the available evidence did not support a conclusion that any of the applicant's medical conditions (MMD, Anxiety Disorder and PTSD) mitigated the basis for applicant's separation - possession and distribution of a controlled substance, treats to cause bodily harm, and wrongful communication.

(3) The applicant through counsel contends, in effect, after serving almost 2 years in civilian confinement, a federal court found that the applicant not guilty by reason of insanity following a forensic examination that shows the applicant's mental health struggles were severe at the time the applicant wrote the letters that led to their discharge from the Army. This shows how unjust it was for the Army to continue to punish the applicant for this conduct when a federal court decided many years ago that the applicant should not be held responsible for this very misconduct. The board considered this contention and determined that the applicant's discharge was proper and equitable.

(4) The applicant through counsel contends, that a comparable case previously decided by the Army Board for Correction of Military Records (ABCMR) can be located at Docket AR20190000162. The applicant in Docket AR20190000162, deployed to Iraq, served over 3 years, and was separated for multiple failures to go to their appointed place of duty, being disrespectful to a noncommissioned officer, and arrest for simple battery. This applicant was diagnosed with PTSD. The ABCMR "found sufficient evidence of in-service mitigation to overcome the misconduct to justify a clemency determination," and upgraded this applicant's characterization of service from general (under honorable conditions) to honorable. The board considered this contention and determined that the applicant's discharge was proper and equitable.

**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 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 MMD, Anxiety Disorder and PTSD diagnoses did not excuse or mitigate the offenses of possession and distribution of a controlled substance, threats to cause bodily harm, and wrongful

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20230012900**

communication. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General (Under Honorable Conditions) Discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable Discharge.

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

8/13/2024

**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