

1. Applicant's Name: [REDACTED]**a. Application Date:** 17 March 2024**b. Date Received:** 17 March 2024**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is Under Other Than Honorable Conditions. The applicant in effect, requests reconsideration of their request for an upgrade to General (Under Honorable Conditions) previously denied in Army Discharge Review Board Docket Number AR20190006761, dated 15 December 2021, and an appearance before the Board.

(2) The applicant seeks relief contending since their discharge, they have actively sought to rectify their past through community service, supporting veteran causes and maintaining a law-abiding and productive life. They have completed a bachelor's and master's degree; they are a member of the National Society of Leadership and Success, earned several professional certifications and have successful employment. Their commitment to these endeavors is a testament to the values they learned in the Army and an indication that their previous in-service misconduct was an aberration. Importantly, their behavior at the time of their discharge was significantly influenced by undiagnosed and untreated Post Traumatic Stress Disorder (PTSD), Major Depressive Disorder and Anxiety, a direct result of their dedicated service and sacrifices they made for the country. These impairments significantly affected their judgement and ability to perform their duties.

(3) They are requesting an upgrade of their discharge based on equity. They believe their case was not unique in its nature but may have been uniquely impacted by the era's limited mental health resources. The discharge was inequitable due to the Limited Availability of Mental Health Resources; while deployed, the availability of mental health resources was extremely limited. This lack of access contributed to the worsening of their conditions. An upgrade would not only rectify a past inequity but also restore honor to their record, more accurately reflect their service and the dedication they continue to show in their civilian life.

(4) A critical factor in their contention is their discharge is inequitable due to documented racial disparities in the military justice system as extensively reported in the "Protect Our Defenders" report. The systemic disparity is not just a statistical anomaly but a reflection of potential biases within the military justice process. As they opted for a discharge in lieu of a court-martial, they contend the decision to seek a discharge in lieu of court-martial was made under the shadow of this disparity.

a. Board Type and Decision: In a records review conducted on 2 March 2026, and by a 3-0 vote, the Board determined that, although only some of the misconduct was medically mitigated, the applicant's length and quality of service, combat record, post-service achievements, and the additional clarifying information presented during the hearing collectively warranted an upgrade. 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, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper

and equitable and voted not to change it. Please see **Board Discussion and Determination** section 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 / Army Regulation 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 20 April 2010

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): 5 February 2010, the charges preferred against the applicant consisted of –

(a) Charge I, violation of Article 89 (Disrespect toward superior commissioned officer), Uniform Code of Military Justice (UCMJ), with one Specification, in that they, did, at or near Bagram Airfield, Afghanistan, on or about 17 January 2010, behave themselves with disrespect toward their superior commissioned officer (NCO), then known to be their superior NCO by saying to them, "Ma'am this ain't about fucking rank, this is about me and my wife, I can fucking talk to my wife," or words to that effect.

(b) Charge II, violation of Article 90 (Willfully disobeying superior NCO), UCMJ, with one Specification – in that they having received a lawful command from their superior NCO, then known to be their superior NCO, to "leave," or words to that effect, did, on divers occasions, at or near Bagram Airfield, Afghanistan, on or about 17 January 2010, willfully disobey the same.

(c) Charge III, violation of Article 91 (Insubordinate conduct toward NCO), UCMJ, with four Specifications, in that they, did, at or near Bagram Airfield, Afghanistan, on or about 17 January 2010 –

(1) Specification 1 – assault an NCO, then known by them to be to a superior NCO, by charging toward the NCO with a clenched fist, point their finger in the NCO's face; and raising their hand to the NCO.

(2) Specification 2 – having received a lawful order from an NCO, then known by them to be a superior NCO, to "leave and go back to [their unit]," or words to that effect, an order which it was their duty to obey, did, on divers occasions, willfully disobey the same.

(3) Specification 3 – having received a lawful order from an NCO, then known by them to be a superior NCO, to have no contact with their spouse Specialist (SPC) N____ H____, an order which it was their duty to obey, did, willfully disobey the same.

(4) Specification 4 – was disrespectful in language toward an NCO, then known by them to be a superior NCO, by saying to the NCO, "no woman is going to talk to me like that" and "I don't care who you are, you are not going to talk to me like that," or words to that effect.

(d) Charge IV, violation of Article 92 (Failure to obey order, regulation), UCMJ, with one Specification, in that they, having knowledge of a lawful order issued by a commissioned officer, an order which it was their duty to obey, did at or near Bagram Airfield, Afghanistan, on or about 17 January 2010, fail to obey the same by wrongfully entering their spouses,

SPC H____'s [quarters], without being met at the door; escorted throughout the building and announcing their presence.

(e) Charge V, violation of Article 128 (Assault), UCMJ, in that they did, at or near Bagram Airfield, Afghanistan, on or about 17 January 2010, unlawfully grab their spouse, SPC H____, and pull them by their sweatshirt.

(2) Legal Consultation Date: 17 March 2010

(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: 2 April 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Reenlistment:** 15 March 2006 / 5 years

b. **Age at Reenlistment / Education / GT Score:** 21 / HS Diploma / 114

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 92A1O, Automated Logistical Specialist / 6 years, 7 months, 12 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (6 May 2007 – 22 July 2008), Afghanistan (15 November 2009 – 11 April 2010)

f. **Awards and Decorations:** ARCOM, AAM-2, AGCM-2, NDSM, ACM-2CS, GWTSM, KDSM, ICM-CS, NCOPDR, OSR-2 / The applicant's Army Military Human Resource Record (AMHRR) reflects award of the ASR, however, the award is not reflected on the DD Form 214.

g. **Performance Ratings:**

- 1 November 2008 – 31 October 2009 / Among the Best
- 1 November 2009 – 2 April 2010 / Fully Capable

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

(1) A DD Form 458 (Charge Sheet) dated 5 February 2010, reflects charges preferred against the applicant as shown above in paragraph 3c(1).

(2) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial, Army Regulation 635-200, Chapter 10, [Applicant], dated 17 March 2010, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They understood that they may request discharge in lieu of trial by court-martial because of the charges preferred against them under Article 112a, UMCJ, authorize the imposition of a bad conduct or dishonorable discharge.

(a) They are making this request of their own free will and have not been subjected to any coercion whatsoever by any person. The applicant further acknowledged they were guilty of the charges against them or a lesser one. Moreover, they thereby state that under no circumstances to they desire further rehabilitation, for they have no desire to perform further military service. Prior to completing this form, they have been afforded the opportunity to consult with appointed counsel for consultation. They have consulted with counsel for consultation who has fully advised them of the nature of their rights under the UCMJ, the elements of the offenses with which they are charged.

(b) While they respectfully request they be separated with a General (Under Honorable Conditions), they understand that if their discharge is accepted, they may be discharged under conditions which are under other than honorable and if they are discharged Under Other Than Honorable Conditions. They have been advised and understood the possible effects of an Under Other Than Honorable Conditions discharge and that as a result of the issuance of such discharge, they will be deprived of many or all Army benefits, that they may be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA) and that they may be deprived of their rights and benefits as a veteran under both Federal and State law. They may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge.

(c) They have been advised that they may submit any statements they desire in their own behalf. The elected to submit statements on their behalf with their request. The applicant submitted the following –

(1) In their personal letter to the separation authority they state their military experience and family struggle. They and there are seeking a divorce and their spouse has been unfaithful. They have given their relationship everything they had to give, with news of their spouse's infidelities came further exasperation and depression. Nothing seemed to comfort them in their mental struggle with their marriage. Sadly, they had an argument where things grew out of hand and they lost their military bearing because of their personal emotions. They are deeply ashamed and sorrowful for their actions. Although it has been very difficult for them to overcome their struggles, the believe that every person should have the opportunity to redeem themselves from their mistakes. They respectfully ask not to judge their six years of their life and military career from an incident that only took five minutes and to please consider a General (Under Honorable Conditions Discharge) as they have had no previous troubles in their past military career.

(2) In the applicant's mother's statement, they ask for leniency and a chance and opportunity for the applicant be able to continue to provide for their children.

(3) An NCO Evaluation Report covering the period 1 November 2008 through 31 October 2009, reflects the applicant's overall potential for promotion and/or service in positions of greater responsibility as "AMONG THE BEST."

(4) In a memorandum, subject: Chain of Command Recommendation regarding: Applicant's Offered Chapter 10 – Discharge in Lieu of Court-Martial, dated 18 March 2010 and 20 March 2010 reflects –

(a) The applicant's company commander recommended the applicant's request for discharge in lieu of court-marital be accepted and their service be characterized as General (Under Honorable Conditions). The commander's rationale: outside of the incident that brought these charges, the applicant has been a model Soldier in my formation. For their family's sake, they believe that a general discharge is in everyone's best interest.

(b) The applicant's battalion commander recommended the applicant's request for discharge in lieu of court-martial be accepted and their service be characterized as General (Under Honorable Conditions). The commander's rationale: the applicant's tenure of service in this battalion has been commendable until this incident. The applicant has let their emotions override their decision making in the relationship with their spouse. They have never hurt their spouse and admits their wrongdoing. It is in their family's best interest.

(c) The applicant's brigade commander recommended the applicant's request for discharge in lieu of court-martial be accepted and their service be characterized as Under Other Than Honorable Conditions. The commander's rationale: an honorable Soldier would never assault their spouse. A professional NCO doesn't disobey higher ranking NCOs and would never assault an officer. To say this, they applicant served under honorable conditions would dishonor every Soldier who lives the Army Values and serves their nation honorably.

(5) A memorandum, Headquarters, Combined/Joint Task Force 82, subject: Request for Discharge in Lieu of Trial by Court-Martial, Pursuant to Army Regulation 635-200, Chapter 10, dated 2 April 2010, reflects the Staff Judge Advocate's recommendation to the separation authority to approve the applicant's request for discharge in lieu of trial by court-martial and that they be separated from the U.S. Army with an Under Other Than Honorable Conditions characterization of service.

(6) A memorandum, Headquarters, Combined/Joint Task Force 82, subject: Request for Discharge in Lieu of Trial by Court-Martial, Pursuant to Army Regulation 635-200, Chapter 10, dated 2 April 2010, reflects the separation authority approval of the applicant's request for discharge in Lieu of Trial by Court-Martial. The separation authority directed the applicant be discharged from the U.S. Army with a characterization of service of Under Other Than Honorable Conditions Discharge. In accordance with Army Regulation 600-8-19, paragraph 10-15a, the applicant will be reduced to the lowest enlisted grade.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 20 April 2010 with 6 years, 7 months and 12 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 2 April 2010
- item 18 (Remarks) – MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – KFS
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

(8) A DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) dated 3 May 2019 reflects the applicant's request for an upgrade of their discharge to Honorable or General (Under Honorable Conditions). The applicant states their contends their military discharge is inequitable. The actions of misconduct are strongly related to symptoms of Post Traumatic Stress Disorder (PTSD) and they seek relief from the Board based upon the inequity of the discharge, the National Defense Authorization Act of 2017 and the Kurta Memorandum of 2017.

(9) On 15 December 2021 the Army Discharge Review Board (ADRB) denied the applicant's request for an upgrade to Honorable or General (Under Honorable Conditions). The rationale for the Board's decision, the applicant's characterization of service, despite applying liberal consideration, their PTSD and other evidence of the applicant's experiences and medical conditions, do not excuse or mitigate the pattern of misconduct with violation of orders, disrespect, and assaults. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority and the applicant was provided full administrative due process.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): The following documents have been provided to the ARBA Medical Advisor, if applicable. See **"Board Discussion and Determination"** for Medical Advisor Details.

(1) Applicant provided:

- Medical Record dated 29 November 2007 reflecting history of anxiety and depression
- Medical Record dated 28 January 2010 reflecting history of mild depression related go spouse "deployed here too, marriage failing apart since got here"
- post service medical document, Inspired Psychiatric Care letter reflects psychiatric diagnoses of PTSD, depression, anxiety and Attention-Deficit/Hyperactivity Disorder

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States) with personal statement
- Statement of Material Contentions in Support of the Request for Discharge Upgrade
- Army Mental Health Treatment Record excerpts
- excerpts of AMHRR documents
- excerpts of post service accomplishments
- United States Government Accountability Office article, Military Justice Department of Defense and the Coast Guard need to Improve their Capabilities to Assess Racial and Gender Disparities, dated May 2019
- 10 United States Code 1177: Members diagnosed with or reasonably asserting PTSD or Traumatic Brain Injury: member examination required before administrative separation
- Discretionary Injustice article "How Racial Disparities in the Military's Administrative Separation System Harm Black Veterans"
- Inspired Psychiatric Nexus Letter
- VA Character of Discharge
- ADRB Case examples
- DSM-5 Diagnostic Criteria for PTSD excerpt
- 3rd Party Recommendation Letters

6. POST SERVICE ACCOMPLISHMENTS: civilian training course, bachelor and master degrees

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

a. Title 10, U.S. Code, Section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 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. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

c. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

d. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

e. 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.

f. Army Regulation 600-20 (Army Command Policy), dated 18 March 2008, prescribed the policies and responsibilities of command, which include the Well-being of the force, military discipline, and conduct, the Army Equal Opportunity Program, and the Army Sexual Assault Victim Program. Paragraph 4-20 (Hazing) stated the Army has been and continues to be a values-based organization where everyone is encouraged to do what is right by treating others as they should be treated – with dignity and respect. Hazing is fundamentally in opposition to our values and is prohibited. Hazing is defined as any conduct whereby one military member or employee, regardless of Service or rank, unnecessarily causes another military member or employee, regardless of Service or rank, to suffer or be exposed to an activity that is cruel, abusive, oppressive, or harmful.

g. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 17 December 2009, 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) A Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual of Courts-Martial, 2008, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(5) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40–501, chapter 8.

(6) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated a discharge under other than honorable conditions normally is 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. For 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.

(7) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

h. 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 "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.

i. 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 Department of Defense Instructions 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.

j. 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. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 112a (Wrongful use of controlled substances).

8. SUMMARY OF FACT(S):

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated an understanding a under other than honorable conditions discharge could be received They completed 6 years, 7 months and 12 days of net active service this period and completed their first full term of service; however, they did not complete their 5-year reenlistment obligation.

c. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is 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. For 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.

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: PTSD, Anxiety, and Depression.

Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is service connected by the VA for combat-related PTSD, Anxiety, and Depression which establishes that the conditions existed during military service.

(2) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant is service connected by the VA for combat-related PTSD, Anxiety, and Depression. Given the nexus between PTSD and difficulty with authority, Charge I (disrespect), Charge II (disobeying a lawful command), Charge III Specification 2 (disobeying a lawful order), Charge III Specification 3

(disobeying a lawful order), and Charge III Specification 4 (disrespect) are mitigated. Charge III Specification 1 (assault), Charge IV (failing to obey a written order by wrongfully entering a female hut without being met at the door, escorted throughout the building, and announcing themselves presence), and Charge V (grabbing their Specialist wife and pulling them by their sweatshirt) are not mitigated by the applicant's PTSD, Anxiety, or Depression. None of these conditions have a natural sequela with assault or interfere with the ability to understand and adhere to the policy for entering an opposite gender hut.

(3) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's behavioral health conditions outweighed the mitigated portions of the misconduct and, when combined with the applicant's overall record and additional information presented at the hearing, justified granting relief.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends since their discharge, they have actively sought to rectify their past through community service, supporting veteran causes and maintaining a law-abiding and productive life. They have completed a bachelor's and master's degree; they are a member of the National Society of Leadership and Success, earned several professional certifications and have successful employment. Their commitment to these endeavors is a testament to the values they learned in the Army and an indication that their previous in-service misconduct was an aberration. The Board considered this contention and found the applicant's sustained record of personal growth, professional achievement, and community involvement to be compelling evidence of rehabilitation that supported granting relief.

(2) The applicant contends their behavior at the time of their discharge was significantly influenced by undiagnosed and untreated PTSD, Major Depressive Disorder and Anxiety, a direct result of their dedicated service and sacrifices they made for the country. These impairments significantly affected their judgement and ability to perform their duties. The Board considered this contention and agreed that the applicant's service-connected behavioral health conditions provided meaningful context for the incident, contributing to the Board's decision to extend liberal consideration and approve an upgrade.

(3) The applicant contends they believe their case was not unique in its nature but may have been uniquely impacted by the era's limited mental health resources. The discharge was inequitable due to the Limited Availability of Mental Health Resources; while deployed, the availability of mental health resources was extremely limited. This lack of access contributed to the worsening of their conditions. The Board considered this contention and acknowledged that restricted access to behavioral health care during the deployment environment likely contributed to the applicant's deteriorating condition, which further supported the Board's determination to grant relief.

(4) The applicant contends an upgrade would not only rectify a past inequity but also restore honor to their record, more accurately reflect their service and the dedication they continue to show in their civilian life. The Board considered this contention and concurred that the applicant's overall record, combat service, and continued dedication in civilian life warranted an upgrade to more accurately reflect their honorable contributions.

(5) The applicant contents a critical factor in their contention is their discharge is inequitable due to documented racial disparities in the military justice system as extensively

reported in the "Protect Our Defenders" report. The systemic disparity is not just a statistical anomaly but a reflection of potential biases within the military justice process. As they opted for a discharge in lieu of a court-martial, they contend the decision to seek a discharge in lieu of court-martial was made under the shadow of this disparity. The Board considered this contention and recognized the applicant's concerns about broader systemic issues, and while the Board found no evidence of bias specific to this case, the totality of the applicant's service and the mitigating factors still supported granting an upgrade.

b. The Board determined that, although only some of the misconduct was medically mitigated, the applicant's length and quality of service, combat record, post-service achievements, and the additional clarifying information presented during the hearing collectively warranted an upgrade. 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, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

c. Rationale for Decision:

(1) Published Department of Defense guidance indicates the guidance is not intended to interfere or impede on the Board's statutory independence. The Board determines the relative weight of the action that was the basis for the discharge and whether it supports relief or not. In reaching its determination, the Board considers the application, available records and any supporting documents included with the application.

(2) The Board voted to upgrade the applicant's characterization of service to Honorable because, after applying liberal consideration to all the evidence before it, the Board determined that relief was warranted.

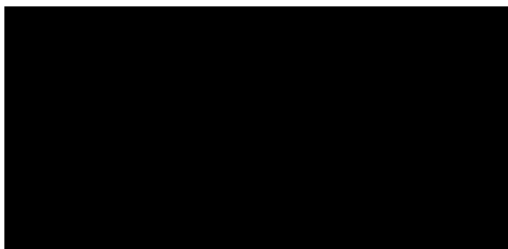
(3) The Board voted to change the applicant's reason for discharge Minor Misconduct with accompanying SPD code of JKN, under the same pretexts.

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:



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