

1. Applicant's Name:

- a. **Application Date:** 24 January 2020
- b. **Date Received:** 1 December 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, the soldier that accused the applicant was extremely deceptive and manipulative when discussing the details of the investigation. This soldier was dishonorably discharged from the military due to domestic violence, because of this development, the truthfulness of the individual who instigated the investigation should be called into questioned.

c. **Board Type and Decision:** In a records review conducted on 7 February 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 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:** 15 March 2018

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 24 January 2018

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed to go to prescribed place of duty on or about 4 March 2017, on or about 6 March 2017, on or about 22 March 2017, and on or about 31 May 2017. Between on or about 4 July 2017 and on or about 15 July 2017 the applicant engaged in an inappropriate relationship.

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

(4) **Legal Consultation Date:** 1 February 2018

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 13 February 2018 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 14 July 2014 / 4 years and 39 weeks

b. Age at Enlistment / Education / GT Score: 17 / High School Graduate / 113

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25B10, IT Specialist / 3 years, 10 months, and 17 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (27 April 2016 - 25 August 2016)

f. Awards and Decorations: NDSM, GWOTSM, ASR, IRCM-CS

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Four developmental counseling forms for failure to report.

(2) CG Article 15, 23 June 2017, for failing to go at the time prescribed to the appointed place of duty on or about 4, 6, and 22 March and 31 May 2017. The punishment consisted of extra duty and restriction for 14 days.

(3) Specialist (SPC) D__ J. W__'s sworn statement, 16 July 2017, states their wife asked if a friend (applicant) could stay the night and in their bed. They agreed to the friend (applicant) staying over and gave into the friend (applicant) sleeping in their bed with their wife. They were never told if anything sexual happened. Although they gave consent to this polyamorous relationship they began to become not ok with the situation, became distracted, unfocused at work, could not be affective to the mission, and was not mentally stable enough to deal with the situation while deployed. They requested that the friend (applicant) not face any punitive negative actions unless they requested for it to happen.

(4) On 16 July 2017, the applicant was counseled on early redeployment, contact restrictions, and domestic abuse policy.

(5) On 17 July 2017, the applicant was given a no contact order based on allegations of improper relationship with a married women.

(6) SPC W__'s sworn statement, 27 July 2017, states SPC W__ confirmed on 8 July 2017 that the applicant stayed in their bed with their wife on 4 July 2017. When asked what guidelines were given by them to their wife with regards to the applicant, the response was don't talk to me about your relationship with the applicant, nothing sexual, not in my house, not in my car, and don't ask for help, figure it out.

(7) Applicant's sworn statement, 28 July 2017, states the applicant had a desire to be in a polyamorous relationship. SPC W__ suggested that the applicant and C__ W__ spend time together on 4 July 2017 since neither of them had plans. The applicant visited SPC W__'s house on 4 July 2017 while SPC W__ was not present. The applicant was aware that C__ W__ was married to SPC W__ and admitted to kissing and hugging C__ W__.

(8) Memorandum for Record, Findings and Recommendations of AR 15-6 Investigation, (Applicant) (adultery), 2 August 2017, reflects the investigating officer found:

(a) Despite denial of no sexual contact by the applicant and two witnesses, the investigating officer found that the preponderance of evidence indicates a sexual relationship occurred. A reasonable person could find that more likely than not, the applicant and C__ W__ had sex between 4 and 8 July 2017. Alternatively, the investigating officer also found by the preponderance of evidence, it was more likely than not, that the applicant and C__ W__ had an inappropriate relationship that was prejudicial to good order and discipline in violation of Article 134, UCMJ (General Article).

(b) The investigating officer recommended that leadership take appropriate disciplinary or administrative action against the applicant.

(9) FG Article 15, 29 September 2017, for engaging in an inappropriate relationship with C__ W__ between on or about 4 and 15 July 2017. The punishment consisted of a reduction from E-4 to E-2; forfeiture of \$896.00 pay per month for 2 months (suspended); and extra duty and restriction for 45 days.

(10) On 11 October 2017, the applicant was counseled on notification of recommendation for administrative separation per AR 635-200, chapter 14-12b, involuntary separation due to a pattern of misconduct. The applicant was flagged for involuntary separation/field initiated (BA).

(11) Report of Mental Status Evaluation (MSE), 17 November 2017, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and TBI with negative results. Per AR 40-501, the applicant did not have a mental illness that would disqualify the applicant from service.

b. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; Statement in Support of Claim.

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

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

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

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

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

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

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

(4) 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.

(5) 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.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian 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 Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. 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, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

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

b. The applicant's DD Form 214 shows the applicant served 3 years, 10 months, and 17 days during which the shows the applicant served 121 days in Iraq. The applicant received one CG and one FG Record of Proceedings under Article 15 for multiple failures to report and engaging in an inappropriate relationship. The applicant was discharged with a general (under honorable conditions) characterization of service on 15 March 2018.

c. The applicant contends, in effect, the soldier that accused the applicant was extremely deceptive and manipulative when discussing the details of the investigation. This soldier was dishonorably discharged from the military due to domestic violence, because of this development, the truthfulness of the individual who instigated the investigation should be called into questioned. The applicant's AMHRR contains the following sworn statement: SPC W___, 16 July 2017, states their wife asked if a friend (applicant) could stay the night and in their bed. They agreed to the friend (applicant) staying over and gave into the friend (applicant) sleeping in their bed with their wife. They were never told if anything sexual happened. Although they gave consent to this polyamorous relationship they began to become not ok with the situation, became distracted, unfocused at work, could not be affective to the mission, and was not mentally stable enough to deal with the situation while deployed. They requested that the friend (applicant) not face any punitive negative actions unless they requested for it to happen.

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 [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **NON SPECIAL/ NON BH CASE (Dr IS NOT a voting member, medical opine only)**

(2) **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(3) Did the condition exist or experience occur during military service? **N/A**

(4) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(5) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention: The applicant contends, in effect, the soldier that accused the applicant was extremely deceptive and manipulative when discussing the details of the

investigation. This soldier was dishonorably discharged from the military due to domestic violence, because of this development, the truthfulness of the individual who instigated the investigation should be called into question. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence, other than the applicant's contention.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the 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 not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention regarding the Soldier that accused the applicant was extremely deceptive and manipulative when discussing the details of the investigation. This Soldier was dishonorably discharged from the military due to domestic violence, because of this development, the truthfulness of the individual who instigated the investigation should be called into question and found that the totality of the applicant's record does not warrant a discharge upgrade. 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 an 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.

10. 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20200009833

2/14/2024

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