

**1. Applicant's Name:**

- a. **Application Date:** 2 September 2020
- b. **Date Received:** 18 September 2020
- 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 general honorable (under conditions). The applicant requests an upgrade to honorable and a change in their reentry code.

(2) The applicant seeks relief stating after making drastic life improvements with their education and career, they would like to change the characterization of their service so they can have an opportunity to better serve their country and professional community with their intellect and experience.

**b. Board Type and Decision:** In a records review conducted on 26 January 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 / Army Regulation 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 30 November 2006

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 November 2006

(2) **Basis for Separation:** disobeying lawful order from a noncommissioned officer (NCO), dereliction of duty, missing medical appointments, and lack of motivation, respect, and discipline to become a quality Soldier.

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

(4) **Legal Consultation Date:** On 12 October 2006, the applicant waived their right to seek legal counsel.

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

(6) **Separation Decision Date / Characterization:** 21 November 2006 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 12 September 2005 / 8 years in the U.S. Army Reserve
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 96
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 10 months, 29 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 4856 (Developmental Counseling Form), dated 31 May 2006, reflects the applicant received event oriented counseling for missing medical appointments. The key points of discussion states the applicant is being counseled on knowingly missing medical appointments from 15 March 2006 through 19 May 2006. Their reason for not going is they do not want to be in the Army.

(2) In memorandum for the commander, physical training and rehabilitation platoon, subject: [Applicant], dated 14 June 2006, reflects the applicant was seen at the physical therapy clinic since 27 February 2006 for a right pubic ramus stress fracture. At this time the applicant states "I refuse therapy, I refuse to train." They have failed to follow the rehabilitation program set forth by the physical therapist. On 4 May 2006, they stated "I want to get out of the Army." The applicant was discharged from physical therapy secondary to refusal to participate in their rehabilitation program.

(3) Two DA Forms 4856, dated 14 June 2006 and 15 June 2006, reflects the applicant received counseling for training refusal, insubordination towards an NCO, failure to follow instructions, and values violations. It was recommended the applicant receive punishment under the Uniform Code of Military Justice (UCMJ).

(4) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated 21 June 2006, reflects the applicant received nonjudicial punishment for, on or about 15 March 2006, and 19 May 2006, failed to go at the time prescribed to their appointed place of duty, to wit: medical appointments and for , on or about 31 May 2006 was derelict in the performance of their duties in that they failed to perform medical rehabilitation training. Their punishment consisted of forfeiture of \$274.00 pay. The applicant elected not to appeal.

(5) A DD Form 2807-1 (Report of Medical History), dated 28 June 2006, reflects the applicant marked "Yes" to broken bone(s), stating they have a stress fracture in their right pubic ramus. Item 30a (Comments) reflects the examiner states the applicant "does not want rehab."

(6) A DD Form 2808 (Report of Medical Examination), dated 28 June 2006, reflects the applicant is qualified for service. Item 77 (Summary of Defects and Diagnoses) reflects status post stress fracture pubic.

(7) A DA Form 2627, dated 18 July 2006, reflects the applicant received nonjudicial punishment for, on or about 31 May 2006 and 7 June 2006, was derelict in the performance of duties in that they willfully failed to perform rehabilitation therapy and for, on or about 7 June 2006, failed a lawful order from an NCO to go to rehabilitation therapy. Their punishment consisted of forfeiture of \$636.00 pay for 2 months and extra duty for 30 days. The applicant elected not to appeal.

(8) A DA Form 4856 dated 24 July 2006, the applicant received counseling, informing them that they are being recommended for separation under Army Regulation 635-200, chapter 14.

(9) On 12 October 2006, the applicant waived their right to seek legal counsel concerning their Chapter 14. They do not desire legal assistance.

(10) A memorandum, Alpha Company, 30th Adjutant General Battalion (Reception) subject: Separation under Army Regulation 635-200, Chapter 14, dated 13 November 2006, notified the applicant of initiating actions to separate them for a Pattern of Misconduct, for disobeying lawful order from an NCO, dereliction of duty, missing medical appoints, and lack of motivation, respect, and discipline to become a quality Soldier. On the same day the applicant acknowledged the basis for the separation and of the rights available to them.

(11) A memorandum, Alpha Company, 30th Adjutant General Battalion (Reception), subject: Separation under Army Regulation 635-200, Chapter 14, undated, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service, stating, the applicant has been counseled, and through subsequent behavior, has demonstrated a lack of acceptance of rehabilitative measures. They have demonstrated through repeated conduct, after formal counseling, that other disposition would be inappropriate. They cannot adapt to the military lifestyle and lacks self-motivation. They represent a command liability and impairs good order and discipline in the unit.

(12) On 16 November 2006, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to not submit a statement on their behalf.

(13) A memorandum for the Commander, Basic Combat Training Brigade, subject: Chapter 14-12b Separation [Applicant], dated 17 November 2006, the Administrative and Civil Law Division, states they have reviewed the chapter action for the applicant and found it is legally insufficient to support separation under Army Regulation 635-200, chapter 14-12b. The characterization in this case must be uncharacterized, see Army Regulation, paragraph 3-9a.

(14) A memorandum, Basic Combat Brigade, Fort Benning, GA, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, 21 November 2006, the separation authority directed that the applicant be separated from the U.S. Army prior to the expiration of their current term of service and receive a General (Under Honorable Conditions) Discharge Certificate.

(15) On 30 November 2006, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 10 months and 29 days of net active service this period and did not complete their first full term of service obligation of 8 years.

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

j. **Behavioral Health Condition(s):** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Diploma, Associate in Arts, Political Science
- Diploma, Bachelor of Arts, International Relations

**6. POST SERVICE ACCOMPLISHMENTS:** completion of their Associate's Degree in Political Science and Bachelor of Arts degree in International Relations.

**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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

**d.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 July 2005, 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)** A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

**(4)** Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

**(a)** When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

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

prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** Paragraph 3-9 (Uncharacterized Separations) stated a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

**(6)** Paragraph 5-17 (Other Designated Physical or Mental Conditions) stated commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing that potentially interfere with assignment to or performance of duty. When commanders' determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation.

**(7)** Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

**(8)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

**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 DoD 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.

#### **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 applicant's AMHRR reflects they received multiple counseling for refusing to participate in their rehabilitation physical therapy and received two occurrences of nonjudicial punishment for failure to go at the time prescribed to their place of duty and dereliction of duty. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions). They completed 10 months and 29 days of net active service; however, they did not complete their 8 year contractual enlistment agreement obligation.

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

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

#### **9. BOARD DISCUSSION AND DETERMINATION:**

**a.** As directed by the 2017 memo signed by [REDACTED] the board considered the following factors:

**(1)** Did the applicant have a condition or experience that may excuse or mitigate the discharge? **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.

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

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

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

**b.** Response to Contention(s): The applicant contends after making drastic life improvements with their education and career, they would like to change the characterization of their service so they can have an opportunity to better serve their country and professional

community with their intellect and experience. The Board considered this contention and the applicant's 10 months of service but determined that these factors did not outweigh the applicant's disobeying a lawful order from a NCO, dereliction of duty, missing medical appointments, and lack of motivation, respect, and discipline to become a quality Soldier.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of 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 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 applicant would like to change the characterization of the applicant's service so the applicant can have an opportunity to better serve the country and professional community with the applicant's intellect and experience 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 the 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, as the reason the applicant was discharged was both proper and equitable.

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



**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:**

2/2/2024

X

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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