

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- 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.

The applicant seeks relief contending, in effect, because the Department of Veterans Affairs (VA) diagnosed them with severe post-traumatic stress disorder (PTSD), their character of service should be upgraded to honorable and a medical discharge.

b. **Board Type and Decision:** In a records review conducted on 21 January 2025, 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 details 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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 February 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 January 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant's continued discreditable conduct prejudicial to good order and discipline, including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice (UCMJ), Army Regulations, and time-honored customs and traditions of the Army, which include:

A Summarized Article 15 on 28 June 2007 for failure to be at the appointed place of duty at the appointed time and making a false official statement.

A Field Grade Article 15 on 17 December 2008 for failing to obey a lawful order by wrongfully occupying a person of the opposite sex living quarters.

A Vacation of a Suspension on 30 December 2008 for failing to obey a no contact order.

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

(4) **Legal Consultation Date:** 15 January 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 19 January 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 November 2007 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 95

c. Highest Grade Achieved / MOS / Total Service: E-4 / 52D10, Power-Generation Equipment Repairer / 2 years, 8 months, 6 days

d. Prior Service / Characterizations: RA, 22 June 2006 – 27 November 2007 / HD

e. Overseas Service / Combat Service: SWA / Iraq-Kuwait (4 March 2008 – 31 January 2009)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Summarized Article 15, 28 June 2007, for failing to go at the time prescribed to their appointed place of duty (1 March 2007), and with intent to defraud, altering an official record by changing DD Form 689 (Sick Slip), from 12 hours to 72 hours quarters (28 February 2007). The punishment consisted of extra duty for 14 days and restriction for 7 days.

Military Protective Order, 5 December 2008, reflects the applicant was given an order not to contact Private First Class (PFC) A. R. because they were having a sexual relationship while both Soldiers were married.

Field Grade Article 15, 17 December 2008, for failing to obey a lawful order issued by Colonel J. A. by wrongfully occupying a person of the opposite sex living quarters (28 November 2008). The punishment consisted of a reduction to E-3; forfeiture of \$843 pay per month for two months (suspended); and restriction for 60 days.

Record Of Supplementary Action Under Article 15, UCMJ, 30 December 2008, reflects the suspended portion of the punishment imposed on 17 December 2008, was vacated for: Article 90, disobeying a lawful command from Captain (CPT) P. P., a superior commissioned officer, not to contact or be within 50 feet of PFC A. R. (22 December 2008).

Numerous Developmental Counseling Forms, for falsifying a quarters slip; disobeying an order not to drive their privately owned vehicle and having an accident; having excessive charges on their Eagle card; barely passing a diagnostic Army Physical Fitness Test; failing to be at appointed place of duty on multiple occasions; being informed of corrective training responsibilities; pending UCMJ action; not being recommended for promotion; being informed basic allowance for housing will end after divorce was finalized; altering a sick call slip; violating cohabitation policy; and Article 15 suspension being vacated for violating a military protective order.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Rating Decision, 3 June 2013, reflecting the VA rated the applicant 50 percent service-connected disabled for PTSD; 50 percent for migraines; 10 percent for tinnitus; and 0 percent for traumatic brain injury (TBI).

Veterans of Foreign Wars (VFW), 11 July 2013, reflecting the VFW assisted the applicant with filing a claim with the VA for PTSD, and the VA rated the applicant 50 percent disabled for the condition, and determined the condition was directly related to military service. The VFW conceded the applicant's circumstances revolving their character was inaccurately based on limited facts and the VA determination substantiates the claim the character should be upgraded to honorable and a medical discharge.

(2) AMHRR Listed: None

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Veterans of Foreign Wars letter; and VA Rating Decision.

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 (Active Duty Enlisted Administrative Separations) 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) Paragraph 3-7a states 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) Paragraph 3-7b states 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) Paragraph 3-8b (2) states prior service activities including, but not limited to, records of convictions by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed will not be considered in determining the characterization of service. To the extent that such matters are

considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization.

(5) 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.

(6) 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.

(7) 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. 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.

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

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

The applicant contends being diagnosed with PTSD by the VA, the condition affected behavior which led to the discharge; and the VA rated the applicant 50 percent disabled for the condition. The applicant provided several medical documents indicating the VA rated the applicant 50 percent service-connected disabled for PTSD; 50 percent for migraines; 10 percent for tinnitus associated with traumatic brain injury (TBI); and 0 percent for TBI. The AMHRR is void of a mental status evaluation.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army

Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the discharge should be changed to a medical discharge. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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 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, various Adjustment Disorders.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 100 percent SC for PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant's offenses of wrongfully occupying the quarters of a person of the opposite sex and violating a military no contact order are not mitigated by the applicant PTSD or Adjustment Disorder. This misconduct is not natural sequela of either condition. The applicant's misconduct is also not mitigated by the history of mTBI as the condition was not of a severity to impact judgement, cognition, or behavior at the time of the misconduct. Records reflect the applicant did not faint and hit his head, rather the applicant reported nearly fainting and being lowered to the ground by friends. Records further reflect the applicant was fully conscious while under medical care, spontaneously recovered, had negative CT scan results, and that the applicant's reported symptoms were not consistent with seizure or pseudo-seizure. As such, records do not support the applicant had a condition that rendered the applicant unable to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Adjustment Disorder outweighed the medically unmitigated separating offenses of wrongfully occupying the quarters of a person of the opposite sex and violating a military no contact order.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD by the VA, the condition affected behavior which led to the discharge; and the VA rated the applicant 50 percent disabled for the condition. The Board liberally considered this contention and determined that the

available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Adjustment Disorder outweighed the medically unmitigated offenses of wrongfully occupying the quarters of a person of the opposite sex and violating a military no contact order.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and found insufficient mitigating factors to outweigh the medically unmitigated offenses of wrongfully occupying the quarters of a person of the opposite sex and violating a military no contact order.

(3) The applicant contends the discharge should be changed to a medical discharge. The Board determined that the applicant's request for a medical discharge does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available 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 to all evidence before the Board, the applicant's Post Traumatic Stress Disorder and Adjustment Disorder did not outweigh the medically unmitigated offenses of wrongfully occupying the quarters of a person of the opposite sex and violating a military no contact order. The Board considered the totality of the applicant's record and determined that it does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an Honorable characterization.

(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 due to the BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000563

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:

1/24/2025

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