

1. Applicant's Name: [REDACTED]**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 the period under review is under other than honorable conditions. The applicant requests an upgrade to general characterization of service.

The applicant seeks relief contending, in effect, voluntarily requesting a discharge because, after returning from Iraq, and experiencing 14 months of combat operations, the applicant was experiencing extreme stress. The applicant was suffering from post-traumatic stress disorder (PTSD). The applicant could not find their way back to the post and went absent without leave. The applicant completely lost their good judgment. A few of the applicant's friends lost their spouses and committed suicide, and the applicant lost their spouse, which was very painful. The applicant made a big mistake by failing to report on time. The applicant was mentally ill, and was hard to face the PTSD. It has been eight years since the applicant's discharge, and they have been a good member of society. The discharge has made it difficult to find a job or obtain better medical treatment from the Department of Veterans Affairs (VA). The applicant decided to request a Chapter 10 after being approached by a judge advocate. The applicant surrendered to the Fort Hood Medical Center after a Soldier found the applicant sleeping under a bridge. The Soldier drove the applicant to the hospital. The applicant's unit picked the applicant up from the hospital, and the applicant went to jail. The applicant's unit informed the applicant the unit could not provide the applicant with housing or medical help because the unit was in the process of a change of command. All mental health doctors were deployed to Afghanistan, and the one on post was booked for eight months. The only choice the applicant had was to remain in confinement until the next chain of command assumed command. The judge advocate recommended because of the applicant's PTSD, the applicant request a Chapter 10 and seek help off post. The judge advocate explained most of the Soldiers who waited for the unit to help had committed suicide. The applicant decided it was better for the applicant to leave the Army. The applicant did not believe the acting chain of command was capable of helping because the military was overwhelmed with Soldiers returning home stressed out and committing suicide. The applicant decided to get the help they needed outside by requesting Chapter 10. Veterans similar to the applicant are discriminated against regarding hiring practices and the type of assistance received from the VA. The applicant desires to be employed, to become better, and to be able to feed their family.

b. Board Type and Decision: In a records review conducted on 5 December 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, including combat service, and partial medical mitigation of the applicant's misconduct combining to outweigh the discharge. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to 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, and the reentry code to RE-3. *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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 8 July 2005

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 31 May 2005, the applicant was charged with: The Charge, violating Article 86, UCMJ; Specifications 1 and 2: Being AWOL from 17 November 2003 to 19 November 2003, and from 3 March 2005 to 24 May 2005.

(2) Legal Consultation Date: 14 June 2005

(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: 29 June 2005 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 March 2003 / 4 years

b. Age at Enlistment / Education / GT Score: 36 / DESG less than HS Diploma / 95

c. Highest Grade Achieved / MOS / Total Service: E-3 / 45G10, Fire Control Systems Repairer / 2 years, 1 day, 1 month

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (12 January 2004 – 23 February 2005)

f. Awards and Decorations: GWOTEM, GWOTSM, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Nine Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 31 October 2003;
 From AWOL to Returned to Military Control (RMC) / PDY, effective 3 November 2003;
 From PDY to AWOL, effective 4 October 2004;
 From AWOL to RMC / PDY, effective 8 October 2004;
 From PDY to AWOL, effective 3 March 2005;
 From AWOL to Dropped From Rolls (DFR), effective 3 April 2005;
 From DFR to PDY, effective 24 May 2005;
 From PDY to Confined by Military Authorities (CMA), effective 24 May 2005; and

From CMA to PDY, effective 30 May 2005.

The Request for Discharge in Lieu of Trial by Court-Martial, 14 June 2005, reflects the applicant includes a charge under Article 85, Desertion, on the request; however, the Charge Sheet reflects two specifications of a charge under Article 86, Absence Without Leave.

i. Lost Time / Mode of Return: 3 months, 5 days (95 days):

AWOL, 31 October 2003 – 2 November 2003 / Surrendered to Military Authorities

AWOL, 4 October 2004 – 7 October 2004 / Surrendered to Military Authorities

AWOL, 3 March 2005 – 23 May 2005 / Surrendered to Military Authorities

CMA, 24 May 2005 – 29 May 2005 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(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; self-authored statement; and Personnel Action form, DFR to PDY.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been a good member of society.

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 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

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

(7) Paragraph 10-8a stipulates 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. (See chap 3, sec II.)

(8) Paragraph 10b stipulates 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.

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 "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.

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-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.

The applicant requests an upgrade to honorable.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be

received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends combat-related PTSD, the loss of friends, and family issues affected behavior which led to the discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR includes no documentation of a mental health diagnosis. The AMHRR is void of a mental status evaluation.

The applicant contends the command did not provide any assistance regarding their mental health issues. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being a good member of society. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

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: Acute Stress Disorder, Anxiety Disorder NOS, PTSD, Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with Acute Stress Disorder and Anxiety Disorder NOS. A couple of weeks after being discharged from the Army, the VA also diagnosed the applicant with combat-related PTSD and Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. The applicant was diagnosed in service with Acute Stress Disorder and Anxiety Disorder NOS. A couple of weeks after being discharged from the Army, the VA also diagnosed the applicant with combat-related PTSD and Depression. Given the nexus between PTSD, Anxiety, Depression, and avoidance, the AWOL in 2005 is

mitigated by the applicant's BH conditions. The AWOL in 2003 is not mitigated because there is no evidence that the applicant's BH conditions existed at that time or contributed in any way. This AWOL occurred prior to combat and almost two years prior to the diagnosis of any BH conditions.

(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 Acute Stress Disorder, Anxiety Disorder, Post Traumatic Stress Disorder, and Depression outweighed the applicant's medically unmitigated AWOL offense in 2003.

b. Response to Contention(s):

(1) The applicant contends combat-related PTSD, the loss of friends, and family issues affected behavior which led to the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Acute Stress Disorder, Anxiety Disorder, Post Traumatic Stress Disorder, and Depression outweighed the applicant's medically unmitigated AWOL offense in 2003. However, the Board found that the applicant's length of service, including combat service in Iraq, mitigated the AWOL offense in 2003. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the command did not provide any assistance regarding their mental health issues. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the reasons discussed above in 9b(1).

(3) The applicant contends being a good member of society. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the reasons discussed above in 9b(1).

(4) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined the discharge is inequitable based on the applicant's length of service, including combat service, and partial medical mitigation of the applicant's misconduct combining to outweigh the discharge. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to 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, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service, to include combat service, and partial medical mitigation of the applicant's misconduct combined to outweigh the discharge. Thus, the prior characterization is no longer appropriate.

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AR20210000577

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

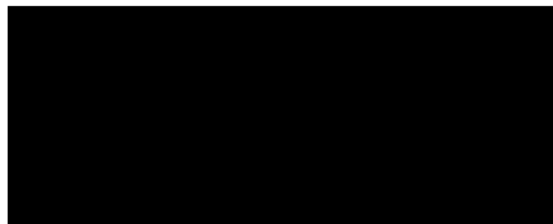
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

12/30/2024



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