

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, their misconduct resulted from undiagnosed medical conditions. The applicant claims to having a serious depressive condition and sleep apnea diagnosis. The applicant believes they would have received assistance and would most likely still be in the Army today if these issues were identified when on active duty. The applicant contends both conditions were diagnosed by the Department of Veterans Affairs.

- b. Board Type and Decision: In a records review conducted on 5 November 2024, and by a 4-1 vote, the Board determined that the characterization of service was inequitable based on the applicant's Major Depressive Disorder outweighed the separating offenses of FTR, communicating a threat, disobeying a lawful order to report, and not keeping the applicant's room locked and to standard in violation of policy. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

- b. Date of Discharge: 11 February 2010

- c. Separation Facts:

- (1) Date of Notification of Intent to Separate: 26 January 2010

(2) Basis for Separation: The applicant was informed of the following reasons: On divers' occasions between on or about 1 September and 15 December 2009, the applicant failed to be at their appointed places of duty.

The applicant disobeyed lawful orders from noncommissioned officers who were both known by the applicant and in the execution of their duties.

On 16 November 2009, the applicant's room was not to Army standards and was left unsecured.

The applicant communicated threats to injure others on more than one occasion.

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

(4) **Legal Consultation Date:** 26 January 2010

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

(6) **Separation Decision Date / Characterization:** 2 February 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 23 August 2007 / 5 years

b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 91B10, Wheeled Vehicle Mechanic / 2 years, 5 months, 19 days

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

e. **Overseas Service / Combat Service:** Korea

f. **Awards and Decorations:** NDSM, GWOTSM, KDSM, ASR, OSR,

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** The AMHRR does not include any actions under the UCMJ; however, an email from CPT N. H. to LT J. B., 16 September 2009, reflects the applicant received two Company Grade Article 15s, both were for Article 86, failure to be at their appointed place of duty; and attended Anger management. Punishment received was not noted.

Numerous Developmental Counseling Forms, for various acts of misconduct.

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Department of Veterans Affairs Rating Decision, 24 February 2011, reflects a rating of 50 percent and a service connection for major depressive disorder with cognitive disorder.

(2) **AMHRR Listed:** A letter from M.S. Neuropsychologist, 13 November 2009, the applicant was diagnosis with Dysthymic Disorder with recurring bouts of major depression; Post Traumatic Headaches; Insomnia and Sleep Apnea; and Pain Disorder Associated with Psychological and Physical Factors. Due to the applicant's current sleep apnea, cognitive fatigue and mood disturbance, the applicant may find it challenging to efficiently perform certain tasks which may be required of them. Limited duty was recommended to allow for current treatment.

Report of Mental Status Evaluation, 17 December 2009, 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 mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board (MEB). The evaluation included a diagnosis. Dysthymic Disorder with recurring bouts of major depression; Post Traumatic Headaches; Insomnia and Sleep Apnea; and Pain Disorder associated with Psychological and Physical Factors. Axis III: Serious medical problems include h/o head trauma at 16 years of age and in August 2008, concussion, with LOC > 10 minutes, PTA > 1 hour, both incidents; Post traumatic Headache Syndrome, R/Shoulder pain, Insomnia with fatigue and daytime drowsiness. Axis IV: Psychosocial stressors include environmental and occupational stressors V15.5 Personal history of two potential TBI events, one GWOT related and one civilian related, LOC < one hour, PTA > one hour. Axis V: Global Assessment of Functioning - GAF: 50. A MEB had been initiated but the conditions for the MEB did not prevent the applicant from carrying out their assigned duties and complying with orders. The applicant was impulsive and displayed poor judgment. The applicant was at high risk per Community Behavioral Health protocol for post psychiatric hospitalization. The command may consider initiating a Chapter 5-17, AR 635- 200 action.

Report of Medical History, 21 December 2009, the examining medical physician noted the applicant's medical conditions in the comments section. The applicant was diagnosed with PTSD.

Report of Mental Status Evaluation, 11 January 2010, 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 mTBI. No diagnosis.

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; Department of Veterans Affairs benefits letter; Department of Veterans Affairs Rating decision. Department of veterans Affairs Declaration of Status of Dependents.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for their mental health from the Department of Veterans Affairs.

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) 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 waivable and nonwaivable 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 waivable. 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 their misconduct resulted from undiagnosed medical conditions. The applicant claims to having a serious depressive condition and sleep apnea diagnosis. The applicant believes they would have received assistance and would most likely still be in the Army today if these issues had been identified when they were on active duty. The applicant

contends both conditions were diagnosed by the Department of Veterans Affairs. The applicant provided a Department of Veterans Affairs Rating Decision, 24 February 2011, reflecting a rating of 50 percent and a service connection for major depressive disorder with cognitive disorder. The AMHRR includes a letter from M. S., Neuropsychologist, 13 November 2009, the applicant was diagnosed with Dysthymic Disorder with recurring bouts of major depression; Post Traumatic Headaches; Insomnia and Sleep Apnea; and Pain Disorder Associated with Psychological and Physical Factors. A Report of Mental Status Evaluation, 17 December 2009, reflecting a diagnosis of Dysthymic Disorder with recurring bouts of major depression; Post Traumatic Headaches; Insomnia and Sleep Apnea; and Pain Disorder associated with Psychological and Physical Factors. Axis III: Serious medical problems include h/o head trauma at 16 years of age and in August 2008, concussion, with LOC > 10 minutes, PTA> one hour, both incidents; Post traumatic Headache Syndrome, R/Shoulder pain, Insomnia with fatigue and daytime drowsiness. Axis IV: Psychosocial stressors include environmental and occupational stressors V15.5 Personal history of two potential TBI events, one GWOT related and one civilian related, LOC < one hour, PTA> one hour. Axis V: Global Assessment of Functioning - GAF: 50. A MEB had been initiated but the conditions for the MEB did not prevent the applicant from carrying out their assigned duties and complying with orders. The medical records in the AMHRR were considered by the separation authority.

The applicant contends seeking help for their mental health from the Department of Veterans Affairs. 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.

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: MDD, Dysthymic Disorder, Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 70 percent service connected for MDD.

(3) Does the condition or experience 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. Given the nexus between MDD and fatigue, amotivation, forgetfulness, and anger and irritability, the applicant's multiple FTRs, communicating a threat, not keeping room to standard, and failing to secure the applicant's room are mitigated. Regarding the offenses of disobeying lawful orders from NCOs, records indicate that many of the instances are related to the applicant failing to report as instructed. These offenses are mitigated given the association. The instance of disobeying a lawful order when the applicant drove to Fort Worth after being directed not to do so reflects an informed decision with willful intent. Therefore, that instance of disobeying a lawful order is not mitigated. The applicant's offense of not completing a required essay, despite being ordered to do so, also reflects willful intent and is therefore not mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Major Depressive Disorder outweighed the applicant's offenses of FTR, communicating a threat, disobeying a lawful order to report, and not keeping the applicant's room locked and to standard in violation of policy. The Board found that the applicant's medically unmitigated misconduct of not completing an assigned essay and violating restriction did not rise to a level to negate meritorious service.

b. Response to Contention(s):

(1) The applicant contends their misconduct resulted from undiagnosed medical conditions. The applicant claims to having a serious depressive condition and sleep apnea diagnosis. The applicant believes they would have received assistance and would most likely still be in the Army today if these issues had been identified when they were on active duty. The applicant contends both conditions were diagnosed by the Department of Veterans Affairs. The Board liberally considered this contention determined that the applicant's Major Depressive Disorder outweighed the separating offenses of FTR, communicating a threat, disobeying a lawful order to report, and not keeping the applicant's room locked and to standard in violation of policy.

(2) The applicant contends seeking help for their mental health from the Department of Veterans Affairs. The Board considered this contention and determined that it did not warrant further upgrade beyond that already decided based on medical mitigation.

c. The Board determined that the characterization of service was inequitable based on the applicant's Major Depressive Disorder outweighed the separating offenses of FTR, communicating a threat, disobeying a lawful order to report, and not keeping the applicant's room locked and to standard in violation of policy. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder outweighed the applicant's offenses of FTR, communicating a threat, disobeying a lawful order to report, and not keeping the applicant's room locked and to standard in violation of policy. The Board found that the applicant's medically unmitigated misconduct of not completing an assigned essay and violating restriction did not rise to a level to negate meritorious service. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code due to multiple instances of medically unmitigated misconduct. Thus, "Pattern of Misconduct/JKA" is both proper and equitable.

(3) The RE code will not change given the service connected BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

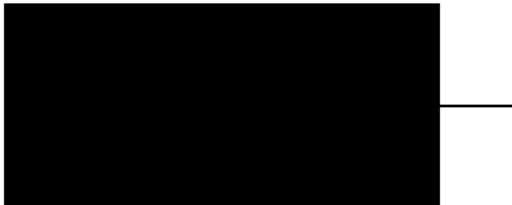
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
AR20210000591

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

11/13/2024



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