

**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 and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, their official record is incorrect. The applicant was never charged under the UCMJ. It is clear from congressional inquiries from Senator K., the late Senator K., and Senator M., their military records were altered prior to being discharged. The applicant had no moral or disciplinary problems, no adverse counseling statements, Article 15s, or other forms of non-judicial punishment. The applicant had a long history of volunteerism. The applicant volunteered for deployment to Iraq and had the option of staying behind due to other Soldiers willing to take their place. Based on the fact the applicant had a clean military record and was evacuated from the battlefield to Landstuhl, Germany, then to Walter Reed, and then back to Fort Bragg for medical treatment proves the applicant's issues were medical. During their deployment to Iraq, the applicant found out their spouse was having an affair, and another person was living in their home, and this had a significant effect on the applicant.

**b. Board Type and Decision:** In a records review conducted on 26 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, to include combat service, and the applicant's Post Traumatic Stress Disorder mitigating much of the applicant's misconduct. 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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 23 April 2004

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (1)

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet:** On 3 February 2004, the applicant was charged with:

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**AR20210000606**

Charge I: Violating Article 89, UCMJ, for Disrespect toward a superior commissioned officer:  
The Specification: On or about 9 September 2003, behave oneself with disrespect toward Captain J.B., their superior commission officer by mumbling under their breath and walking away while Captain J.B., was talking to the applicant.

Charge II: Violating Article 91, UCMJ, for Insubordinate conduct:

Specification 1: On or about 9 September 2003; assault Sergeant C. K., a noncommissioned officer, who was in the execution of their office by throwing a piece of concrete at them.

Specification 2: On 9 September 2003, was disrespectful in language and deportment toward Sergeant C. K., who was in the execution of their office by lying on a cot and rolling away from Sergeant C. K., while they were being addressed by Sergeant C. K. and saying "are you willing to take that kind of chance" or words to that effect.

Specification 3: On or about 9 September 2003, disobeyed a lawful order by having received a lawful order from Sergeant C. K., a noncommissioned officer, then known by the applicant to be a noncommissioned officer to get out of bed and get dressed. or words to that effect, an order which it was the applicant's duty to obey.

Specification 4: On or about 9 September 2003, disobeyed a lawful order by having received a lawful order from Sergeant W. G., a noncommissioned officer then known by the applicant to be a noncommissioned officer to get down from the tree or words to that effect an order which it was the applicant's duty to obey.

Charge III: Violating Article 95, UCMJ, for resisting apprehension. The Specification: On or about 9 September 2003, resist being apprehended by Sergeant C. K., a person authorized to apprehend the accused.

**(2) Legal Consultation Date:** NIF

**(3) Basis for Separation:** NIF

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 17 February 2003 / 365 days

**b. Age at Enlistment / Education / GT Score:** / 19 / High School Graduate / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88M10, Motor Transport Operator / 2 years, 8 months, 29 days

**d. Prior Service / Characterizations:** ARNG, 25 July 2001 – 24 September 2001 / NA  
IADT, 25 September 2001 – 1 February 2002 / HD  
ARNG, 2 February 2002 – 16 February 2003 / NA

**e. Overseas Service / Combat Service:** SWA / Iraq (NIF)

**f. Awards and Decorations:** NDSM, GWOTSM, AFRM, ASM

**g. Performance Ratings: NA**

**h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

Investigating Officer Report, 30 March 2004, reflects, although the mental health physician states the applicant should be discharged in accordance with (IAW) AR 635-200, paragraph 5-17, the applicant was aware of their actions and the repercussions of such actions. The investigating officer recommendation as to the resolution of this case was to have Colonel H., impose a Field Grade Article 15, for the offenses committed. Bar the applicant from reenlistment, and initiate separation IAW AR 635-200, chapter 14-12c, for Commission of a Serious Offense.

The applicant provided two Developmental Counseling Forms, for failure to obey and event oriented.

**i. Lost Time / Mode of Return: None****j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Report of Mental Status Evaluation, 7 September 2003, 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.

Mental Status Evaluation, 8 September 2003, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. In accordance with AR 635-200, the applicant met the criteria for chapter 5-13, administrative separation for personality disorder as indicated by the following behavioral manifestations defined by DSM-IV. Blaming others when situations of the applicant's making are not to their expectations. Minimizing their responsibility for their action. The rest of the statement is not legible.

Walter Reed record of inpatient treatment, 16 October 2003, reflects a diagnosis of Adjustment Disorder with Depressed Mood.

Department of Veteran Rating Decision, 28 July 2008, reflects a diagnosis of Post Traumatic Stress Disorder (PTSD), with a rating of 70 percent.

**(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; Application for discharge review, 30 April 2013; self-authored letter; Request for records, 7 October 2008; Walter Reed record inpatient treatment 16 October 2003; Request for change of discharge status; email; letter of support; Army Review Board Agency letter; Inpatient Treatment Record Cover Sheet; medical records; Department of Veterans Affairs Rating Decision; Investigating Officer Report; two Mental Status Evaluations;

five letters; two Developmental Counseling Forms and Charge Sheet; Article 32 Summary Proceeding; Orders 260-025.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant sought treatment from the VA.

**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 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.

**(5)** 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.)

**(6)** 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 applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant provided evidence they were charged with three charges and specifications of violating the UCMJ. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of general (under honorable conditions).

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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 their issues were for medical reasons. The applicant provided a Report of Mental Status Evaluation, 7 September 2003, reflecting 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. A Mental Status Evaluation, 8 September 2003, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. In accordance with AR 635-200, the applicant met the criteria for chapter 5-13, administrative separation for personality disorder as indicated by the following behavioral manifestations defined by DSM-IV. Blaming others when situations of the applicant's making are not to their expectations. Minimizing their responsibility for their action. Also, a Walter Reed record of inpatient treatment, 16 October 2003, reflecting a diagnosis of Adjustment Disorder with Depressed Mood. A Department of Veteran Rating Decision, 28 June 2008, reflecting a diagnosis of Post Traumatic Stress Disorder (PTSD), with a rating of 70 percent. The AMHRR is void of a mental status evaluation.

The applicant contends their spouse was having an affair and another person was living in their home, and this had a significant effect on the applicant. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends their military records were altered prior to being discharged. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends seeking medical help from the VA. 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 third-party statement provided with the application reflects the applicant was a reliable, disciplined, and enthusiastic Soldier during the period before the applicant's attachment to the deploying company. The applicant joined the unit at the same time as another Soldier and the commander remembers being impressed with both Soldiers marksmanship and consistent good efforts during physical training. When the commander was making selections for deployment to Iraq, there were several Soldiers who came to see the commander to try to get out of deploying. The applicant made no such efforts to shirk their duty and seemed enthusiastic about deploying with their platoon.

#### 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, MDD, Adjustment Disorder with Depressed Mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's found the applicant is 70 percent SC for PTSD.

(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. Given the nexus between PTSD and problems with authority figures, the applicant's offenses of disrespect toward a superior officer, disrespect toward an NCO, and disobeying a lawful order, are mitigated. The assault of an NCO is not mitigated as it is not natural sequela of any of the applicant's in-service BH conditions. Resisting apprehension is not mitigated due to the misconduct being directly associated with the non-mitigated misconduct (i.e., the applicant threw the concrete at the NCO while the NCO was in pursuit of the applicant).

(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, Major Depressive Disorder, and Adjustment Disorder outweighed the applicant's medically unmitigated offense of assault of an NCO and resisting apprehension.

**b. Response to Contention(s):**

(1) The applicant contends their issues were for medical reason. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, and Adjustment Disorder outweighed the applicant's medically unmitigated offense of assault of an NCO and resisting apprehension. However, the Board found that the applicant's service record outweighed these offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs changed. 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 their spouse was having an affair and another person was living in their home, and this had a significant effect on them. 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 their military records were altered prior to being discharged. The Board determined that the applicant's concern regarding altered records 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 the discharge is inequitable based on the applicant's length of service, to include combat service, and the applicant's Post Traumatic Stress Disorder mitigating much of the applicant's misconduct. 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 the applicant's Post Traumatic Stress Disorder combining to outweigh the applicant's misconduct. Thus, the prior characterization is no longer appropriate.

(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**



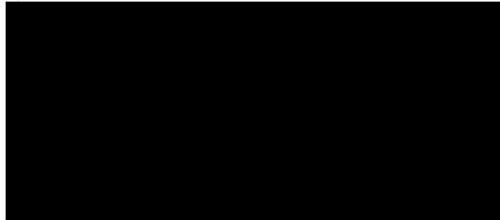
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- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

## Authenticating Official:

12/5/2024



### 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  
UOTH – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs