

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, the applicant returned from Iraq in 2006 as an Infantryman; they returned unsure of the emotional toll would have on them. The applicant lost four very close friends while being deployed and never properly took the time to cope with the loss. After returning from deployment, the applicant was in school to become a 35S 45 days later. They did not have time to settle from deployment and had to focus on passing the most difficult of all the Intelligence MOSs. While in school, they battled with converting from a combat-oriented specialty to being in an office behind a computer. After graduating in October 2006, the applicant arrived at the new duty station on Fort Meade. Finally, being able to slow the pace of the military career by being at a permanent duty station, the memories of being deployed started to settle in. The applicant started having trouble sleeping. It was hard to acclimate to the vast separation in cultures between being an infantryman to being in intelligence. With the loss of the best friend, roommate, squad leader, and friend from the company, they tried to self-medicate by smoking marijuana. The marijuana took the edge off as well as made it possible to move around. The applicant had a Lombard Strain, which caused the legs to go numb from the deployment. The applicant took the issue with their marijuana use to the company commander and informed them they had been using marijuana to self-medicate. The company commander started Article 15 proceedings and enrolled the applicant in the Army Substance Abuse Program (ASAP). ASAP made them worse, and in turn, they continued to self-medicate with marijuana. The Pattern of Misconduct narrative reason has negatively impacted their ability to obtain a job which puts to use everything the Army has trained them to do unjustly. The applicant did the right thing, used the Army Values of integrity, was honest about their drug use, admitted their emotional state, and accepted the consequences. The applicant has received awards for their ability to go above and beyond. The applicant is married to an active service member who is in school and would love the opportunity to make up for the way they departed the military either through reentry or the ability to obtain a job using the skills the Army has taught them.

b. **Board Type and Decision:** In a records review conducted on 31 October 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 4 June 2008

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 18 March 2008

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant received a Field Grade Article 15 for wrongful use of a controlled substance in May 2007; was investigated for committing indecent assault on an opposite sex Airman in July 2007; and misused the official government computer to wrongfully access sexually explicit internet sites in July 2007. This continued misconduct brings discredit and is prejudicial to good order and discipline while continuing to violate the accepted standards of personal conduct found in the UCMJ, Army Regulations, the civil law, and time-honored customs and traditions of the Army.

(3) Recommended Characterization: The Company Commander recommended Honorable and the Battalion Commander recommended General (Under Honorable Conditions)

(4) Legal Consultation Date: 18 March 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 31 March 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 July 2005 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 110

c. Highest Grade Achieved / MOS / Total Service: E-5 / 35S20, Signals Collector/Analyst / 5 years, 2 months, 17 days

d. Prior Service / Characterizations: RA, 18 March 2003 – 20 July 2005 / HD

e. Overseas Service / Combat Service: SWA / Iraq (22 January 2005 – 2 February 2006)

f. Awards and Decorations: ARCOM, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 22 May 2007, for wrongfully using marijuana (between on or about 17 March 2007 and 17 April 2007). The punishment consisted of a reduction to E-4; forfeiture of \$200 pay per month for two months; and extra duty for 45 days.

Office of the Inspector General National Security Agency Central Security Service Report, Computer Misuse, 17 July 2007, forensic evidence indicates the applicant misused the Agency computer and Unclassified Internet account. The applicant failed to exercise good judgment and used Agency systems in a manner which would reflect negatively on the Agency. The applicant violated JER 5500.7-R and NSA/CSS Policy 6-6. Additionally, by virtue of the misuse, the applicant violated the terms of the NSA "User Agreement."

CID Report of Investigation – Final/SSI/JOINT – 0062-2007-CID012-98960-6C1 / 9G, 28 August 2007, investigation determined the applicant committed the offense of Indecent Assault when they touched A1C R. on the buttocks and private area without consent, while in A1C R.'s barracks room.

i. Lost Time / Mode of Return: None

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: Online application; Certificate of Release or Discharge from Active Duty; certificate; Permanent Orders # 179-08; Certificate of Clearance and/or Security Determination; Orders 129-0008.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is married to an active-duty service member and is in school.

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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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), the issues, and documents submitted with the application were carefully reviewed.

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 good service, including a combat tour and receiving awards for going above and beyond. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends returning from a deployment unsure of the emotional toll would have on them. They lost four very close friends while being deployed and never properly took the time to cope with the loss. Within 45 days of returning, they were in school to become a radar signal interceptor analyst. They did not have time to settle from deployment and had to focus on school. After graduating and once they arrived at the new duty location, the memories of being deployed started to settle in and they could not sleep. It was hard acclimating to being a signal Soldier rather than an Infantryman. The applicant started using marijuana to self-medicate to cope. The applicant took the issue with their marijuana use to the company commander and informed them they had been using marijuana to self-medicate. 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 contains no documentation of a medical diagnosis.

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.

The applicant desires to rejoin the military service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant is married to an active duty service member and is in school. 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: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with 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 self-medicating with substances, the wrongful use of a controlled substance is mitigated. However, there is no natural sequela between PTSD and being investigated for committing indecent assault on an opposite sex Airman or misusing a government computer to access sexually explicit internet sites since PTSD does not interfere with the ability to distinguish between right and wrong and act in accordance with 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 outweighed the applicant's medically unmitigated offenses of indecent assault or misusing a government computer.

b. Response to Contention(s):

(1) The applicant contends returning from a deployment unsure of the emotional toll would have on them. They lost four very close friends while being deployed and never properly took the time to cope with the loss. Within 45 days after returning, they were in school to become a radar signal interceptor analyst. They did not have time to settle from deployment and had to focus on school. After graduating and once they arrived at the new duty location, the memories of being deployed started to settle in and they could not sleep. It was hard acclimating to being a signal Soldier rather than an Infantryman. The applicant started using marijuana to self-medicate to cope. The applicant took the issue with their marijuana use to the company commander and informed them they had been using marijuana to self-medicate. 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 outweighed the applicant's medically unmitigated offenses of indecent assault or misusing a government computer.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant's Patterns of Misconduct narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of indecent assault or misusing a government computer.

(3) The applicant contends good service, including a combat tour and receiving awards for going above and beyond. The Board considered the applicant's five years of service, including combat service in Iraq, but determined that the applicant's record does not outweigh the applicant's misconduct.

(4) 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.

(5) The applicant desires to rejoin the military service. The Board considered this contention and voted to maintain the RE-code at RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate

(6) The applicant is married to an active duty service member and is in school. The Board considered the applicant's post-service accomplishments but determined that they applicant's do not outweigh the applicant's misconduct.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted 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 did not outweigh the medically unmitigated offenses of indecent assault or misusing a government computer. The Board also considered the applicant's contentions regarding good service and post-service accomplishments but found that the totality of the applicant's record 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 upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

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

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

11/12/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000614

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