

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 honorable.

The applicant seeks relief contending, in effect, having honorable service until they were deployed to Korea. When assigned to Korea, the applicant was an E-5 and had deployed twice to Iraq and once to Kuwait. After leaving the war zone, the applicant went to their duty station in Korea, and their nerves began to unravel. The applicant realizes they made some decisions seniors in charge did not see as proper; however, as a combat veteran, they made decisions based on the organization's readiness rather than the economic value. Once the applicant began to buck the system, authority came down hard on them and the military life began to fall apart. The applicant has sought treatment at the VA Medical Center in Iowa City for depression and PTSD. The applicant has not been diagnosed with PTSD; however, the symptoms are such the VA believes they should continue with visits. Due to the deployments and the experiences the applicant had while deployed, they believe the negative behavior while in Korea was a result of the trauma they experienced during the deployments.

- b. **Board Type and Decision:** In a records review conducted on 31 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighing the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty. 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:** 28 December 2012

- c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 15 November 2012, the applicant was charged with:

Charge I: Violating Article 86, UCMJ:

Specification 1: On or about 13 December 2011, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 2: On or about 5 September 2012, without authority, fail to go at the time prescribed to the appointed place of duty.

Charge II: Violating Article 90, UCMJ:

Specification 1: On or about 7 January 2012, having received a lawful command from CPT J. P., a superior commissioned officer, to not consume alcohol, or words to the effect, willfully disobeyed the same.

Specification 2: On or about 7 January 2012, having received a lawful command from CPT J. P., a superior commissioned officer, to not leave the installation, or words to the effect, willfully disobeyed the same.

Charge III: Violating Article 92, UCMJ. The Specification: On or about 4 September 2012, fail to obey a lawful general regulation by wrongfully possessing a machete.

Charge IV: Violating Article 112, UCMJ. On or about 23 September 2012, found drunk on duty as a Wheeled Vehicle Mechanic.

(2) Legal Consultation Date: NIF

(3) Basis for Separation: NIF

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 30 November 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 June 2010 / 4 years

b. Age at Enlistment / Education / GT Score: 24 / High School Letter / 117

c. Highest Grade Achieved / MOS / Total Service: E-5 / 91B20, Wheeled Vehicle Mechanic / 8 years, 6 months, 12 days

d. Prior Service / Characterizations: RA, 17 June 2004 – 9 October 2006 / HD
RA, 10 October 2006 – 18 June 2010 / HD

e. Overseas Service / Combat Service: Italy, Korea, SWA / Iraq (19 December 2004 – 28 November 2005; 15 March 2010 – 1 March 2011); Kuwait (18 June 2007 – 11 September 2008)

f. Awards and Decorations: ARCOM-2, AAM-3, AGCM-2, NDSM, GWOTEM, GWOTSM, KDSM, ICM-2CS, NCOPDR, ASR, OSR-5

g. Performance Ratings: 1 March 2010 – 30 September 2010 / Marginal
1 October 2010 – 15 May 2011 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Charge Sheet as previously described in paragraph 3c(1).

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: Application for Correction of Military Record; self-authored statement; Veterans Service Office letter; Recommendation for Award; email; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than

honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 3-7c 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 10-8a 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.)

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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaivable 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's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was 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 under other than honorable conditions.

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's request for a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial is void from the AMHRR.

The applicant contends good service, including three combat tours and receiving several awards. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends making decisions which were not seen as proper by their chain of command; however, as a combat veteran, they made decisions based on the readiness of the organization rather than on the economical value. Once the applicant began to buck the system,

authority came down on them and their military life began to fall apart. The applicant's AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends after a deployment and assignment to Korea, their nerves began to unravel and because of the deployments, and the experiences. The negative behavior while in Korea was a result of the trauma they experienced during the deployments. The applicant has sought treatment at the VA Medical Center in Iowa City for depression and PTSD. 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 PTSD diagnosis.

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: Adjustment Disorder, PTSD, Unspecified Depressive Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder and is service connected by the VA for PTSD and Unspecified Depressive Disorder. Service connection establishes that the PTSD and Unspecified Depressive Disorder also existed during military service.

(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, Depressive Disorder, avoidance, and self-medicating with substances, as well as the nexus with PTSD and difficulty with authority, the FTRs, disobeying lawful commands, and being found drunk on duty are mitigated. However, there is no natural sequela between an Adjustment Disorder, PTSD, or Unspecified Depressive Disorder and wrongfully possessing a machete since none of these conditions 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? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighed the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty. The Board found that the applicant's wrongful possession of a machete did not rise to a level to negate meritorious service.

b. Response to Contention(s):

(1) The applicant contends after a deployment and assignment to Korea, their nerves began to unravel because of the deployments, and the experiences. The negative behavior while in Korea was a result of the trauma they experienced during the deployments. The applicant has sought treatment at the VA Medical Center in Iowa City for depression and PTSD. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighed the applicant's

offenses of FTR, disobeying lawful commands, and being found drunk on duty. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including three combat tours and receiving several awards. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighing the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty.

(3) The applicant contends making decisions not seen as proper by their chain of command; however, as a combat veteran, they made decisions based on the organization's readiness rather than the economic value. Once the applicant began to buck the system, authority came down on them and their military life began to fall apart. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighing the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighing the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty. 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 Post Traumatic Stress Disorder, Unspecified Depressive Disorder outweighing the applicant's offenses of FTR, disobeying lawful commands, and being found drunk on duty. The Board found that the applicant's wrongful possession of a machete did not rise to a level to negate meritorious service. 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.

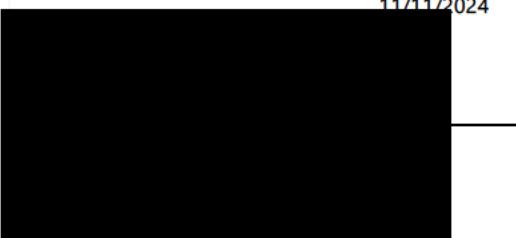
(3) The RE code will change to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210000617****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:

11/11/2024



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