

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 characterization is inequitable due to prejudice from the former unit and not being allowed to seek counsel in the duration of the former unit vacating the suspended chapter against the applicant. The NCO support channel and chain of command members had issues with the applicant beyond professional. The unit set the applicant up for failure, not allowing the applicant to seek counsel after being informed the suspended chapter was vacated.

b. **Board Type and Decision:** In a records review conducted on 12 November 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 3 February 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 August 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On or about 23 June 2011, the applicant was disrespectful in language and deportment toward SSG S. A. J.;

Willfully disobeyed SSG S. A. J.;

Was derelict in the performance of their duties;

Communicated a threat toward SSG S. A. J.;

On or about 24 July 2011, neglectfully destroyed government property; and,

Was disrespectful in language toward SSG A. R. B.

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

(4) **Legal Consultation Date:** 3 September 2011

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

(6) **Separation Decision Date / Characterization:** On 9 September 2011 the separation authority directed the applicant's discharge with a characterization of service of general (under honorable conditions). In accordance with AR 635-200, paragraph 1-18, the separation authority directed the discharge be suspended until 8 September 2012 (not to exceed 12 months), at which time if there was no evidence of further misconduct or action which constituted substandard performance of duty, the action would be automatically remitted.

On 20 January 2012, the separation authority vacated the applicant's suspended separation and directed the applicant be separated under the provision of Chapter 14, paragraph 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 13 September 2007 / 6 years

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 15S10, OH-58D Helicopter Repairer / 4 years, 4 months, 21 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (20 December 2008 – 27 December 2009; 12 February 2011 – 27 September 2011)

f. **Awards and Decorations:** ARCOM, AAM, MUC, VUA, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 6 November 2009, on or about 18 October 2009, was disrespectful in language toward SSG A. R. B., a noncommissioned officer. The punishment consisted of a reduction to E-3; forfeiture of \$409.

Commander's Report reflects the applicant received an FG Article 15 imposed on 7 July 2011. The applicant was found guilty of one specification of Article 86, two specifications of Article 91, one specification of Article 92, and one specification of Article 134. The punishment consisted of reduction to E-1; forfeiture of \$783 pay per month for two months, and 45 days of extra duty. The Article 15 was included in the AMHRR; however, was illegible.

Letter of Reprimand, 9 August 2011, reflects the applicant was reprimanded for failing to exercise good judgment and sound safety principles when they continued to operate a forklift despite communication with the ground guide becoming unclear.

MPR# 08702-2011-MPC033, 17 December 2011, reflects the applicant the subject of an investigation for expired state registration and driving while post privileges were suspended.

Several Developmental Counseling Forms, for various acts of misconduct.

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

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

(1) **Applicant provided:** 159th Brigade Clinical Psychologist letter, 22 August 2011, reflects the applicant was being seen by a behavioral health officer. The sessions focused on oppositional attitudes and behaviors which appeared to stem from childhood abuse.

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation (BHE), 8 August 2011, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The BHE does not reflect a diagnosis.

Report of Medical Examination, 17 August 2011, the examining medical physician noted the in the comments section the applicant was fit for chapter, may follow up for BH issues.

Report of Medical History, 19 August 2011, the examining medical physician noted insomnia / BH issues, being treated in the comments section.

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 the Review of Discharge; self-authored statement; Certificate of Release or Discharge from Active Duty; separation packet; five third-party letters; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is employed by the Boeing Company and has paid to use their military training to obtain an Airframe and Power Plant license. They have never been arrested and has no record of disrespect or improper conduct in their civilian employment.

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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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-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.

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 contends not being allowed to seek counsel in the duration of the former unit vacating the suspended chapter against the applicant. The unit set the applicant up for failure and they were not given a chance to seek counsel after being informed the suspended chapter was being vacated. On 9 September 2011, in accordance with AR 635-200, paragraph 1-18, the separation authority directed the discharge be suspended until 8 September 2012, at which time, if there was no evidence of further misconduct or action which constituted substandard performance of duty, the action would be automatically remitted. The suspension was dependent upon no further evidence of misconduct and or actions which constitute substandard performance of duty. On 17 December 2011, the applicant was pulled over at Gate 10. The Military Police ticketed the applicant for driving with no registration and driving on post with a post restriction. Counseling Statement, 9 January 2012, reflects the applicant was notified of the commander's intent to recommend vacation of the suspension and immediate separation. The

separation authority vacated the suspension on 20 January 2012 which gave the applicant time to exercise the three-day response. The commander was not required to send the applicant to counsel, only afford the applicant the opportunity to seek counsel.

The third-party statements provided with the application speak of how the applicant was treated by the chain of command during a deployment. They state the applicant was not trained or mentored properly. One statement is from SSG A. B. whom the applicant was given an article 15 for disrespecting and SSG A. B. states the situation was taken out of context, and they did not believe they had been disrespected by the applicant.

The applicant is employed by the Boeing Company and has paid to use their military training to obtain an Airframe and Power Plant license. They have never been arrested and has no record of disrespect or improper conduct in their civilian employment. 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's Medical Advisor, a voting member, 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.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found the applicant is 100 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 in language and toward a SSG and disrespect in language in deportment toward a different SSG are mitigated. The applicant's offense of communicating a threat is typically mitigated by PTSD given the nexus with angry verbal outburst. However, given that applicant threatened to kill the SSG while in a combat zone and had access to lethal means, the misconduct rises to a level of egregiousness that is not mitigated by PTSD nor MDD. The applicant's dereliction in performance of duty (i.e., failure to report movement in theater) is also not mitigated given evidence that the applicant actions were based on informed decisions and willful intent.

(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 and Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of communicating a threat and dereliction of duty.

b. Response to Contention(s):

(1) The applicant contends not being allowed to seek counsel in the duration of the former unit vacating the suspended chapter against the applicant. The unit set the applicant up for failure and they were not given a chance to seek counsel after being informed the suspended chapter was being vacated. The Board considered this contention but found insufficient evidence to support the applicant's assertion that the applicant was not permitted to contact counsel in the eleven days between being notified that command intended to vacate the suspension and the separation authority's action. Instead, the Board found that the applicant was given three days to contact counsel after being informed of the intent to separate the applicant.

(2) The third-party statements provided with the application speak of how the applicant was treated by the chain of command during a deployment. They state the applicant was not trained or mentored properly. One statement is from SSG A. B. whom the applicant was given an article 15 for disrespecting and SSG A. B. states the situation was taken out of context, and they did not believe they had been disrespecting by the applicant. The Board considered this contention but ultimately did not address it as the applicant's disrespect offenses were mitigated by the applicant's behavioral health conditions as discussed above in 9c(3).

(3) The applicant is employed by the Boeing Company and has paid to use their military training to obtain an Airframe and Power Plant license. They have never been arrested and has no record of disrespect or improper conduct in their civilian employment. The Board considered this contention but determined that the applicant's post-service accomplishments do not outweigh the applicant's medically unmitigated offenses of communicating a threat and dereliction of duty.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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 and Major Depressive Disorder did not outweigh the medically unmitigated offenses of communicating a threat and dereliction of duty. The Board also considered the applicant's contentions regarding post-service accomplishments and statements that the applicant's disrespect offenses were taken out of context but found that the totality of the applicant's record does not warrant a discharge upgrade. The Board found that the applicant's contention that the applicant was not permitted to seek counsel was not supported by the available evidence]. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000686

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:

11/22/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

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