

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, the applicant served this country bravely and honorably in combat. The applicant has a clean record with no other UCMJ infractions. The hearing was without due process and tainted by promises made to the applicant by trusted superiors being chaptered out for this infraction was not under consideration. The decision to chapter the applicant failed to consider the medical condition, which at the time of the infraction clearly affected the applicant's judgement. Had the hearing officer, previously unknown to the applicant, been aware of the performance in combat, the medical condition at the time of the infraction and the clean record without any prior UCMJ infractions, they would not have imposed such a severe sanction for such a relatively minor offense.

b. Board Type and Decision: In a records review conducted on 15 October 2024, and by a 3-2 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, and the applicant's Post Traumatic Stress Disorder partially mitigating the applicant's misconduct. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more 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: 12 July 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 5 June 2012

(2) Basis for Separation: The applicant was informed of the following reasons: For manipulation of medical appointment slips; violation of Fort Drum pass policy; lying/disrespect to a Non-Commissioned Officer; negligence in medication prescribed; and stealing of narcotic medication.

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

(4) **Legal Consultation Date:** 5 June 2012

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

(6) **Separation Decision Date / Characterization:** 29 June 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 4 August 2009 / 3 years, 17 weeks

b. **Age at Enlistment / Education / GT Score:** 24 / some college / 124

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1P, Infantryman / 2 years, 11 months, 9 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (25 March 2011 – 15 March 2012)

f. **Awards and Decorations:** NDSM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL, CIB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Article 15, 2 March 2012, on or about 26 January 2012, with intent to deceive, make to SGT C. medical appointment documents, an official statement, which statement was totally false and was then known by the said to be so false. The punishment consisted of a reduction to E-2; forfeiture of \$835 pay per month for two months; and extra duty and restriction for 45 days.

Several Developmental Counseling Forms, for various acts of misconduct.

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

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

(1) **Applicant provided:** VA Medical Center letter, 6 February 2014, reflects the applicant was receiving treatment for military-related trauma in the PTSD Clinic at VA Boston Healthcare System.

(2) **AMHRR Listed:** Report of Mental Status Evaluation (MSE), 15 May 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The MSE contains a diagnosis.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; attorney brief; with listed exhibits 1 through 30.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has completed the last semester in college.

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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." 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 good service, including a combat tour and receiving numerous awards.

The applicant contends the decision to chapter them out failed to consider the applicant's medical condition, which at the time of the infraction clearly affected their judgement. There was no mention of being chaptered out of the Army until the applicant had almost completed the 45 days of extra duty and restriction to base. Their superior assured the applicant being chaptered or receiving less than an honorable discharge was off the table. The applicant provided a VA Medical Center letter, 6 February 2014, which reflects the applicant was receiving treatment for military-related trauma in the PTSD Clinic at VA Boston Healthcare System. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 15 May 2012, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The MSE contains a diagnosis. The MSE was considered by the separation authority. The developmental counseling form, 15 May 2012, reflects the applicant was informed they were being counseled for elimination under the provisions of AR 635-200, Chapter 14-12 a and b and if the conduct was repeated, action may be initiated to separate the applicant from the Army. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant claims the offenses leading to the discharge were minor. The AMHRR indicates the applicant committed many discrediting offenses. Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The third-party statements provided with the application reflect the applicant's good character, dedication; commitment, integrity, leadership skills and hard work while serving in the Army.

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 has completed the last semester in college. 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 found that, based on the Board's Medical Advisor's opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, 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 that, based on the Board's Medical Advisor's opine, 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 the use of substances to self-medicate, the applicant's misuse of prescribed medication and stealing narcotic medication is mitigated. However, the misconduct of manipulation of medical appointment slips, violating Fort Drum's pass policy, and providing a false statement is not mitigated, as the misconduct is not natural sequela of any diagnosed condition. Records reflect the unmitigated misconduct was based on an informed decision and willful intent to deceive. Additionally, the applicant's offense of disrespect to an NCO by not going to parade rest and then arguing with the NCO is not mitigated, as the misconduct occurred prior to the applicant's reported Criterion A Trauma.

(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 manipulation of medical appointment slips, violation of Fort Drum pass policy; and disrespect to a Non-Commissioned Officer.

b. Response to Contention(s):

(1) The applicant contends the decision to chapter them out failed to consider the applicant's medical condition, which at the time of the infraction clearly affected their judgement.

There was no mention of being chaptered out of the Army until the applicant had almost completed the 45 days of extra duty and restriction to base. Their superior assured the applicant being chaptered or receiving less than an honorable discharge was off the table. 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 and Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of manipulation of medical appointment slips, violation of Fort Drum pass policy; and disrespect to a Non-Commissioned Officer. However, the Board found that the partial medical mitigation of the applicant's misconduct, combined with the applicant's record of service, did warrant a change to the applicant's characterization of service.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but determined that the applicant's Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of manipulation of medical appointment slips, violation of Fort Drum pass policy; and disrespect to a Non-Commissioned Officer.

(3) The applicant contends good service, including a combat tour and receiving numerous awards. The Board considered the applicant's service record and credited it in the decision to upgrade the characterization of service.

(4) The applicant claims the offenses leading to the discharge were minor. The Board considered this contention but determined that the applicant's offenses of manipulation of medical appointment slips, violation of Fort Drum pass policy; and disrespect to a Non-Commissioned Officer were of a severity to warrant the applicant's Misconduct (Serious Offense) narrative reason for separation.

(5) 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.

(6) The applicant has completed college. The Board considered this contention but determined that further upgrade, beyond what has been granted above, was not warranted.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, and the applicant's Post Traumatic Stress Disorder partially mitigating the applicant's misconduct. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's record of service and Post Traumatic Stress Disorder outweighed the applicant's General characterization of service. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code due to the applicant's medically unmitigated offenses of manipulation of medical appointment slips, violation of Fort Drum pass policy; and disrespect to a Non-Commissioned Officer, and the reason the applicant was discharged was both proper and equitable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000735

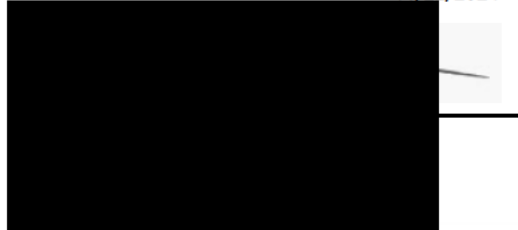
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

11/22/2024



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