

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, Mental Health was evaluating the applicant for sleep issues as far back as 2008. The applicant was late on several occasions because of the medication Ambien. The applicant was diagnosed with depression and prescribed Zoloft. The combination of medications had a heightened affect of drowsiness, causing the applicant to miss formation. The applicant's command was not aware the applicant could not be around crowds anymore because of the applicant's anxiety. The applicant informed the chain of command, but the applicant was expected to be there around formations. The applicant's depression and anxiety disorder affected the applicant's job, family, and overall career. The applicant was late because of improper medications and was later prescribed Celexa, Zyprexa, and Divalproex. During this time the applicant sought help for post-traumatic stress disorder (PTSD), for which the applicant continues to seek help. The applicant was a solid noncommissioned officer (NCO), but their world fell apart. The applicant served four tours overseas and was promoted to Staff Sergeant (SSG). The applicant had a difficult time coping with mental health issues and self-referred to the Bradley Center at Saint Francis Hospital.

b. **Board Type and Decision:** In a records review conducted on 15 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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 2 April 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 January 2014

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

Between 5 September 2011 and 31 October 2013, the applicant committed adultery;

Between 1 July and 8 August 2013, the applicant failed to pay their spouse in a timely manner;

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Between 22 July and 8 August 2013, the applicant lied to a noncommissioned officer (NCO), and committed fraud;

On or about 15, 24, and 25 July 2013, the applicant failed to report; and

From 6 to 9 September 2013, the applicant was absent from their unit'

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 28 January 2014

(5) Administrative Separation Board: On 28 January 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 14 March 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 October 2012 / 6 years

b. Age at Enlistment / Education / GT Score: 28 / HS Graduate / 105

c. Highest Grade Achieved / MOS / Total Service: E-6 / 12N3P, 2B Horizontal Construction Specialist / 4 years, 2 months, 29 days

d. Prior Service / Characterizations: USAR, 10 February 2005 – 15 December 2005 / NA
ADT, 24 February 2005 – 6 October 2005 / HD
(Concurrent Service)
RA, 16 December 2005 – 6 July 2007 / HD
RA, 7 July 2007 – 15 October 2012 / HD

e. Overseas Service / Combat Service: SWA / Iraq (16 February 2006 – 15 December 2006, 3 December 2007 – 20 May 2008, 2 October 2009 – 4 October 2010); Kuwait (17 June 2012 – 22 February 2013)

f. Awards and Decorations: ICM-4CS, ARCOM-4, AAM-2, MUC, VUA, AGCM-2, NDSM, GWOTEM, GWOTSM, NCOPDR, ASR, OSR-3, CAB

g. Performance Ratings: 20 November 2011 – 19 November 2012 / Among the Best
18 November 2012 – 18 June 2013 / Fully Capable
19 June 2013 – 27 September 2013 / Marginal
28 September 2013 – 14 March 2014 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Four Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 25 July 2013;
From AWOL to PDY, effective 25 July 2013;
From PDY to AWOL, effective 6 September 2013; and
From AWOL to PDY, effective 9 September 2013.

Field Grade Article 15, 26 September 2013, for failing to go at the time prescribed to the appointed place of duty (x 3) (15, 24, and 25 July 2013), and being absent without leave (from 6 to 9 September 2013). The punishment consisted of a reduction to E-5; forfeiture of \$1,446 pay per month for two months (suspended); extra duty for 45 days; and an oral reprimand.

Informal AR 15-6 Investigation Findings and Recommendations, 31 October 2013, reflects the investigating officer (IO) found the allegations against the applicant of extra marital affairs and lying to a commissioned officer were supported by the evidence. The allegation of fraud against the U.S. government was not supported by the evidence. The IO recommended an Article 15 and to continue the chapter proceedings. The findings and recommendations were approved by the appointing authority.

Field Grade Article 15, 13 March 2014, for failing to go at the time prescribed to the appointed place of duty (x7) (2, 3, and 27 December 2013; 14, 15, and 22 January 2014; and 5 February 2014). The punishment consisted of a reduction to E-4; forfeiture of \$1,213 pay (suspended); extra duty for 45 days (suspended); and an oral reprimand.

Four Developmental Counseling Forms, for failing to report on multiple occasions; failing to obey an order or regulation; having a command directed mental status evaluation; pending separation for a pattern of misconduct.

i. Lost Time / Mode of Return: 39 days:

NIF, 26 November 2009 – 28 December 2009 / NIF

NIF, 27 February 2012 – 28 February 2012 / NIF

AWOL, 25 July 2013 – 25 July 2013 / NIF

AWOL, 6 September 2013 – 8 September 2013 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, 13 November 2013 and 2 December 2013, reflects the applicant's chronic problems: depression; myopia; insomnia; alcohol abuse in remission; alcohol abuse; alcohol intoxication; and partner relational problem. The record states "MEDCOM Form 774 positive for depression and PTSD, PCL/PHL 9 paperwork incomplete, reviewed by provider.

Report of Medical Examination, 8 October 2013, the examining medical physician noted in the summary of defects and diagnoses section: Insomnia; headache syndrome.

(2) AMHRR Listed: Report of Medical Examination as described in previous paragraph 4j(1).

Report of Mental Status Evaluation, 17 December 2013, 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 command was advised to consider the influence of these conditions. The applicant was diagnosed with generalized anxiety disorder (GAD).

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

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for Correction of Military Record; Application for the Review of Discharge; Report of Medical History (page 3); Report of Medical Examination Chronological Record of Medical Care; Record of Proceedings under Article 15, UCMJ; Saint and Francis Hospital Patient Rights.

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) 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 waivable and nonwaivable 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 waivable. 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 suffering from sleep issues, depression, and an anxiety disorder, and seeking help for PTSD. The applicant provided medical documents showing the applicant's chronic problems listed as depression; myopia; insomnia; alcohol abuse in remission; alcohol abuse; alcohol intoxication; and partner relational problem. The applicant tested positive for depression and PTSD. The applicant underwent a medical examination on 8 October 2013, and the examining medical physician noted insomnia and headache syndrome. The applicant's AMHRR contains the medical examination provided by the applicant and reflects the applicant underwent a mental status evaluation (MSE) on 17 December 2013, indicating the applicant could appreciate the difference between right and wrong, which indicates the applicant was mentally responsible and was able to recognize right from wrong and was screened for PTSD and TBI. The applicant was diagnosed with GAD. The documents in the applicant's AMHRR were considered by the separation authority.

The applicant contends good service, including four combat tours.

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, GAD, Depression, Persistent Depressive Disorder, Adjustment Disorder with Anxious Mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 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 avoidant behavior, the applicant's FTR and AWOL offenses are mitigated. Records also support the applicant's contention that some of the FTRs were secondary to oversleeping due to medication. However, the applicant's offenses of adultery, failure to pay the applicant's spouse in a timely manner, and making a false official statement are not mitigated as the misconduct is

not natural sequela of any of the diagnosed BH conditions.

(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, Generalized Anxiety Disorder, Persistent Depressive Disorder, Adjustment Disorder outweighed the applicant's medically unmitigated offenses of adultery, making a false official statement, and failure to pay the spouse in a timely manner.

b. Response to Contention(s):

(1) The applicant contends suffering from sleep issues, depression, and an anxiety disorder, and seeking help for PTSD. 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, Generalized Anxiety Disorder, Persistent Depressive Disorder, Adjustment Disorder outweighed the applicant's medically unmitigated offenses of adultery, making a false official statement, and failure to pay the spouse in a timely manner.

(2) The applicant contends good service, including four combat tours. The Board considered the applicant's four years of service, including multiple combat tours and numerous awards received, but determined that the applicant's record does not outweigh the applicant's medically unmitigated offenses of adultery, making a false official statement, and failure to pay the spouse in a timely manner.

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, Generalized Anxiety Disorder, Persistent Depressive Disorder, Adjustment Disorder did not outweigh the medically unmitigated offenses of adultery, making a false official statement, and failure to pay the spouse in a timely manner. The Board also considered the applicant's contention regarding good service 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, as 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:

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- 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:

11/1/2024

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