

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, serving over six years of honorable service. The applicant contends having issues readjusting to life after returning from deployment. The applicant claims getting a divorce, losing custody of children and everything they had when they came on orders to Fort Carson. The applicant states they saw a physician assistant at Fort Carson, and was given sleeping and anxiety pills; post-traumatic stress disorder (PTSD) was not diagnosed at the time. The applicant states moving to Fort Drum, and upon arriving, was told there was no room on base or in town and would have to look for suitable housing in Syracuse, New York, 75 miles away and ride a bus to work every day. With everything going on, the applicant finally lost it and had a complete mental breakdown. The applicant describes establishing a new life with a spouse and children and being able to get psychiatric care for PTSD, anxiety, and a sleep disorder. The applicant claims they were denied the opportunity for an administrative discharge board or to write a letter to the convening court-martial authority, which they believe harmed the discharge process.

b. Board Type and Decision: In a records review conducted on 26 September 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL separating offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changing the separation authority to AR 635-200 paragraph 14-12a, the narrative reason 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 details 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 / General (Under Honorable Conditions)

b. Date of Discharge: 13 February 2014**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 21 January 2014, the applicant was charged with: The Charge: Violating Article 85, UCMJ, for being in Desertion. The Specification: The applicant did, on or about 12 April 2005, without authority and with intent to remain away therefrom permanently, absent oneself from their unit, to wit: C Company, 1st Battalion, 32d Infantry Regiment, 3d Brigade Combat Team, located at Fort

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Drum, New York, and did remain so absent in desertion until they were apprehended on or about 8 January 2014.

(2) Legal Consultation Date: 21 January 2014

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 3 February 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 July 2002 / 5 years

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / NIF
NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11C20, Indirect Fire Infantry / 6 years, 10 months, 23 days

d. Prior Service / Characterizations: RA, 25 June 1998 – 23 July 2002 / HD

e. Overseas Service / Combat Service: SWA / Iraq (6 April 2003 – 5 April 2004)

f. Awards and Decorations: ARCOM, AAM, AGCM-2, NDSM, GWOTEM, GWOTSM, NCOPDR, ASR, OSR, CIB

g. Performance Ratings: September 2002 – August 2003 / Fully Capable
September 2003 – August 2004 / Among the best
September 2004 – April 2005 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 12 April 2005;
From AWOL to Dropped From Rolls (DFR), effective 13 May 2005; and
From Dropped From Rolls (DFR) to Present for Duty (PDY), effective 8 January 2014.

i. Lost Time / Mode of Return: 8 years, 8 months, 26 days (AWOL, 12 April 2005 – 7 January 2014) / Apprehended by Civil Authorities

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored letter; Army Training Transcript; Verification of Military Training; Promotion Orders 260-126; DA Form 1059; Permanent Orders 200-01; Permanent Orders 332-206; two Army Commendation Medal Certificates; two Army Achievement Medal Certificates; two NCO Evaluation Reports.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for PTSD, anxiety, and a sleep disorder.

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 3-7f (2) states a discharge under other than honorable conditions may be issued without board action if the Soldier requests discharge in lieu of trial by court-martial.

(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 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) 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.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The 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, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends receiving care for PTSD, anxiety, and a sleep disorder. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR is void of a mental status evaluation.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends they were denied the opportunity for an administrative discharge board or to write a letter to the convening court-martial authority, which they believe harmed the discharge process. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Army Regulation 635-200 states a discharge under other than honorable conditions may be issued without board action if the Soldier requests discharge

in lieu of trial by court-martial. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends moving to Fort Drum, and upon arriving, was told there was no room on base or in town and would have to look for suitable housing in Syracuse, 75 miles away and ride a bus to work every day. With everything going on, the applicant finally lost it and had a complete mental breakdown. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends seeking treatment for PTSD, anxiety, and a sleep disorder. 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. Additionally, the applicant asserts Anxiety, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for PTSD. Given the nexus between PTSD and avoidance, the applicant's PTSD mitigates the Desertion that led to the separation. The applicant's self-asserted Anxiety is subsumed under the PTSD diagnosis and is inconsequential given the full mitigation for PTSD.

(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 outweighed the applicant's AWOL separating offense.

b. Response to Contention(s):

(1) The applicant contends receiving care for PTSD, anxiety, and a sleep disorder. The Board liberally considered the applicant's behavioral health condition during the applicant's service and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL offense.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense.

(3) The applicant contends they were denied the opportunity for an administrative discharge board or to write a letter to the convening court-martial authority, which they believe harmed the discharge process. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense.

(4) The applicant contends, moving to Fort Drum, and upon arriving, was told there was no room on base or in town and would have to look for suitable housing in Syracuse, 75 miles away and ride a bus to work every day. With everything going on, the applicant finally lost it and had a complete mental breakdown. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense.

(5) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL separating offense. 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. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of 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 outweighed the applicant's AWOL offense. 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.

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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:



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