

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, an upgrade would allow them to receive benefits. The applicant was never given any UCMJ charges. In a congressional inquiry the applicant states they had finished a medical board for blown out knees and a broken back, prior to the discharge and was told they would still receive severance pay of \$90,000 and benefits. Since being discharged, the Army has stripped the applicant of all benefits and the \$90,000 owed to the applicant for their injuries; and the applicant's five children have lost their medical insurance as well. The applicant understands what they did was wrong, and the decisions made resulted in the applicant being in trouble; however, others in the unit did the same thing and were punished and were allowed to stay in the military.

b. **Board Type and Decision:** In a records review conducted on 19 September 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 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 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 11 March 2014

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 21 January 2014, the applicant was charged with:

Charge I: Violating Article 90, UCMJ. The Specification: Having received a lawful command from CPT P. B., to have no contact with SGT C. J, the spouse, family or residence or words to the effect, did on or about 30 August 2013 and on or about 6 December 2013, willfully disobey the same.

Charge II: Violating Article 112a, UCMJ. The Specification: Between on or about 3 September 2013 and on or about 18 September 2013, wrongfully use methamphetamines.

Charge III: Violating Article 134, UCMJ.

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

**AR20210000771**

Specification 1: The applicant, a married person did between on or about 1 August 2013 and on or about 6 December 2013, wrongfully have sexual intercourse with E. J. a married person not the spouse, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Specification 2: The applicant had a duty for the care of B. and B's children under the age of 16 years and did endanger the physical health, safety, and welfare of said B. and B., by consuming methamphetamines while leaving the children unattended with access to drugs and drug paraphernalia, such conduct constituted culpable negligence, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Charge IV: Violating Article 107, UCMJ. The Specification: On or about 27 August 2013, with intent to deceive, make to Investigator J. R., an official statement, which statement was totally false and was then known by the applicant to be so false.

**(2) Legal Consultation Date:** 21 February 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:** None

**(5) Separation Decision Date / Characterization:** 27 February 2013 / Under Other Than Honorable Conditions

#### **4. SERVICE DETAILS**

**a. Date / Period of Enlistment:** 28 December 2011 / NIF

**b. Age at Enlistment / Education / GT Score:** 38 / some college / 100

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 74D3P, Chemical Operations Specialist / 13 years, 7 months, 15 days

**d. Prior Service / Characterizations:** RA, 27 July 2000 – 13 August 2002 / HD  
RA, 14 August 2002 – 10 August 2006 / HD  
RA, 11 August 2006 – 27 December 2011 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (15 January 2002 – 15 July 2002); Iraq (1 March 2003 – 18 February 2004)

**f. Awards and Decorations:** ICM-2CS, PH, ARCOM-V, ARCOM-7, AAM, MUC, AGCM-4, NDSM, GWOTSM, NCOPDR-2, ASR, OSR, CIB

**g. Performance Ratings:** 1 October 2011 – 30 September 2012 / Among the Best

**h. Disciplinary Action(s) / Evidentiary Record:** Orders 066-001, 7 March 2014, reflect the applicant was reduced in rank from SSG to PVT effective 27 February 2014.

Charge Sheet as previously described in paragraph 3c(1).

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Memorandum for Commander, Request for Discharge In Lieu of Trial by Court-Martial, 27 February 2014, reflects the applicant had been diagnosed as experiencing PTSD or TBI by a physician, clinical psychologist, or psychiatrist.

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

**5. APPLICANT-PROVIDED EVIDENCE:** Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty; separation authority approval memorandum; self-authored statement; congressional inquiry; OCL Letter; third-party letter.

**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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

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

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

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

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

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

f. 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.

g. 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 under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

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

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board.

Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends they had finished a medical board for blown out knees and a broken back, prior to the discharge and was told they would still receive severance pay of \$90,000 and benefits. Since being discharged, the Army has stripped the applicant of all benefits and the \$90,000 owed to the applicant for their injuries; the applicant's five children have lost their medical insurance as well. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

The third-party statement provided with the application was written by the applicant's parent and states the applicant was called on to serve this country; however, when they returned the applicant left a part of their self behind which no amount of time can heal.

#### **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: Adjustment Disorder, PTSD, Anxiety Disorder NOS, and Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, PTSD, Anxiety Disorder NOS, and Depression; the VA has service connected the 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 provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, PTSD, Anxiety Disorder NOS, and Depression, and the VA has service connected the PTSD. Given the nexus between PTSD, Anxiety Disorder NOS, Depression, and self-medicating with substances, the wrongful use of methamphetamines is mitigated. However, there is no natural sequela between an Adjustment Disorder, PTSD, Anxiety Disorder NOS, or Depression and disobeying a lawful command not to have contact with a SGT or that SGT's family, having sexual intercourse with a married person not the spouse, child endangerment, or making a false official statement since none of these

conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. Accordingly, none of this misconduct is mitigated by the applicant's 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 Adjustment Disorder, Post Traumatic Stress Disorder, Anxiety Disorder NOS, and Depression outweighed the applicant's medically unmitigated offenses of violating a no contact order, having sexual intercourse with a married person not the spouse, child endangerment, and making a false official statement.

**b. Response to Contention(s):**

(1) The applicant contends good service, including two combat tours and receiving many awards to include the Purple Heart. The Board considered the applicant's 13 years of service, including being combat-wounded and the numerous awards received, and found that the applicant's record does not outweigh the medically unmitigated offenses of violating a no contact order, having sexual intercourse with a married person not the spouse, child endangerment, and making a false official statement.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(3) The applicant contends they had finished a medical board for blown out knees and a broken back prior to the discharge and was told they would still receive severance pay of \$90,000 and benefits. Since being discharged, the Army has stripped the applicant of all benefits and the \$90,000 owed to the applicant for their injuries; the applicant's five children have lost their medical insurance as well. The Board determined that the applicant's contentions regarding a medical board, severance pay, and benefits do not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(4) The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. The Board considered this contention but found insufficient evidence to support that the applicant's chain of command's separation action was arbitrary, capricious, or otherwise inequitable toward the applicant.

**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 a 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 the evidence before the Board, the applicant's Adjustment Disorder, Post Traumatic Stress Disorder, Anxiety Disorder NOS, and Depression

did not outweigh the applicant’s medically unmitigated offenses of violating a no contact order, having sexual intercourse with a married person not the spouse, child endangerment, and making a false official statement. The Board also considered the applicant's contentions of good service and inequitable treatment 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant’s conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an Honorable characterization.

(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.

**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:**

X

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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