

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, it all began around 20 June 2012, when the applicant received pictures and phone calls, with evidence someone had robbed and burned down one of their houses in Ohio. When the applicant's parent passed away, the parent left the applicant some property. The applicant was trying to accept responsibility for incidents. The applicant was on block leave in Oregon for a family reunion and was at their parent's property. The first night, the applicant and the applicant's spouse at the time were not getting along. They had an altercation, and someone called the police. The next day, the applicant turned themselves in when the applicant found out it was required. The applicant informed the chain of command of the circumstances, and the applicant may not make it back from leave on time, depending on how long the applicant would be detained. The applicant was released the next day, and no bond was required. The applicant informed the chain of command, the applicant was obtaining an attorney for the charges and a restraining order. The chain of command called the applicant a liar and threatened the applicant with an Article 15 because the applicant's mug shot never made it to the internet. The applicant's attorney was constantly involved with their first sergeant (1SG) because of the threats. Over the next few months, everything was dropped, and the restraining order lifted. At that same time, the applicant and the spouse proceeded with a divorce. Before these charges, the applicant's conduct was excellent with no negative counseling. The applicant believes the discharge was inequitable based on these incidents. The applicant was trying to serve the country on a second tour to Afghanistan. The applicant enjoyed where they were in their career. The applicant was advancing, had a score of 285 on the Army Physical Fitness Test, and loved training; however, the applicant was forced out by commanding officers. The applicant maintained employment with Northern Pipeline with Natural Gas for over a year, with a positive attitude and work ethic; had no criminal or traffic offenses; maintained good behavior; and maintained a strong credit history. The applicant's main objective and goal is to begin their education in business and obtain a pilot's license. The applicant believes their deployment in Iraq was very honorable. The applicant wanted to remain on active duty and is proud of their service. The applicant further details the contentions in an allied self-authored statement provided with the application, including the issues with their properties; the court case against the applicant; disciplinary action by the unit; harassment by the chain of command; the applicant's Inspector General (IG) complaint against the chain of command; and circumstances surrounding the applicant's mental health.

b. **Board Type and Decision:** In a records review conducted on 12 September 2024, and by a 3-2 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: Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 21 December 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 January 2011 / 3 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 22 / HS Graduate / 109

c. Highest Grade Achieved / MOS / Total Service: E-3 / 19D10, Calvary Scout / 1 year, 11 months, 18 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (26 July 2011 – 12 November 2011)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ICM-CS, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: The applicant provided:

Company Grade (CG) Article 15, 28 September 2012, for failing to go at the time prescribed to the appointed place of duty (20 September 2012). The punishment consisted of a reduction to E-2; forfeiture of \$389 pay (suspended); extra duty for 14 days; and restriction for 14 days (suspended).

Company Grade Article 15, 15 November 2012, for making a false official statement (x2) (23 October 2012). The punishment consisted of a reduction to E-1; forfeiture of \$347 pay; and extra duty and restriction for 14 days.

Developmental Counseling Form, 28 November 2012, for pending separation under AR 635-200, Chapter 14, paragraph 14-12c.

Commander's Report, 3 December 2012, reflecting the specific, factual reason(s) for action recommended was the applicant wrongfully made false official statements on divers occasions.

State of Oregon, Judgment, 21 March 2013, reflecting the applicant waived appearance in court and was represented by counsel in court on 18 March 2013. The applicant was convicted of Count 2, harassment based upon a plea of guilty, and the sentence consisted of bench probation for 11 months. Count 1, assault in the fourth degree; Count 3, disorderly conduct in the second degree were dismissed.

Orders 267-0041, 19 December 2012, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 21 December 2012 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was not authenticated with the applicant's electronic signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: William Beaumont Army Medical Center, Mental Health Discharge Instructions, 29 October 2012, reflecting the applicant was admitted on 25 October 2012, and diagnosed with adjustment disorder with disturbance on emotions and conduct, suicidal ideation; personality disorder not otherwise specified (NOS); problems with family support, occupational, financial, and marital; and a global assessment of functioning (GAF) score of 55.

William Beaumont Army Medical Center Behavioral Health letter, 4 June 2014, reflecting, while in the military, the applicant was treated for chronic insomnia, prescribed medication, and attempting to cope with marital problems. The Behavioral Health officer recommended an upgrade to allow the applicant the opportunity to continue medical treatment offered by the Department of Veterans Affairs and to secure adequate employment.

(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 statement; Enlisted Record Brief; Order of the Combat Spur; National Personnel Records Center letter; separation orders; enlistment documents; two CG Article 15s; military medical documents; Developmental Counseling Form; Commander's Report; ScoreSense.com credit report; William Beaumont Army Medical Center letter; third character reference; and State of Oregon Court Judgment.

6. POST SERVICE ACCOMPLISHMENTS: The applicant maintained employment with Northern Pipeline with Natural Gas for over a year, has no criminal or traffic offenses; maintained good behavior; and maintained a strong credit history.

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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(6) 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.

(7) 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant provided a Commander's Report reflecting the specific, factual reason(s) for action recommended was the applicant wrongfully made false official statements on divers occasions. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

The applicant contends suffering mental health conditions and coping with a divorce. The applicant provided medical documents reflecting the applicant was diagnosed with adjustment disorder with disturbance on emotions and conduct, suicidal ideation; personality disorder NOS; problems with family support, occupational, financial, and marital; and a GAF score of 55. The applicant was treated for chronic insomnia and prescribed medication. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends harassment by members of the chain of command and made an IG complaint. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the charges by civilian authorities were dropped. The applicant provided court documents reflecting the applicant was convicted of harassment, and the charges of assault in the fourth degree and disorderly conduct in the second degree were dismissed after the applicant was discharged.

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 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 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 contends maintaining employment, having no criminal or traffic offenses, maintaining good behavior, and maintaining a strong credit history. 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.

The third party statement provided with the application speaks highly of the applicant. It recognizes the applicant's good conduct and work ethics after leaving the Army.

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 and PTSD.

(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 and PTSD and is service connected by the VA for the PTSD that existed prior to service but was exacerbated by military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant was diagnosed in service with an Adjustment Disorder and PTSD and is service connected by the VA for the PTSD that existed prior to service but was exacerbated by military service. Liberal consideration is applied, however, there is no natural sequela between an Adjustment Disorder or PTSD and wrongfully making false official statements since neither condition interferes with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of making false official statement.

b. Response to Contention(s):

(1) The applicant contends suffering mental health conditions and coping with a divorce. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of making false official statements.

(2) The applicant contends harassment by members of the chain of command and made an IG complaint. The Board considered this contention but found insufficient evidence in the current AMHRR or applicant-provided evidence to support that the applicant experienced harassment from the chain of command.

(3) The applicant contends the charges by civilian authorities were dropped. The Board considered this contention but found that the applicant was convicted of harassment. Further, the applicant was separated for making false official statements, not for civilian offenses.

(4) The applicant contends good service, including a combat tour. The Board considered the applicant's length of service/combat service and determined that the applicant's record does not outweigh the applicant's medically unmitigated offenses of making false official statements.

(5) 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.

(6) 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.

(7) The applicant contends maintaining employment, having no criminal or traffic offenses, maintaining good behavior, and maintaining a strong credit history. The Board considered the applicant's post-service accomplishments and found that they do not outweigh the applicant's medically unmitigated offenses of making false official statements.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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 evidence before the Board, the applicant's Adjustment Disorder and Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of making false official statements. The Board also considered the applicant's contentions regarding good service and being harassed by the chain of command but found that the totality of the evidentiary 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:

- 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:

9/16/2024

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