

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 did not present any issues of propriety or equity for the Board's consideration. The applicant's Army Military Human Resource Record (AMHRR) contains a statement, submitted at the time of separation, requesting retention. The applicant contended joining the Army because of family tradition. When the applicant was assigned to Fort Sill, the applicant was the "go-to" person and always exceeded the standards. When the applicant was assigned to Germany, the applicant worked in Wounded in Action and did exceptionally well, although it was a new system finance was working with for Soldiers downrange. The applicant was working well while assigned to Korea, but had a huge downfall because when it was time to go off post, the applicant was required to have a battle buddy, and people would joke with the applicant. The applicant believed it was discrimination and retaliated. The applicant received negative counseling, but never received an Article 15. The applicant became alcohol dependent because of the applicant's anger and stress, but had not had a drink since 11 January 2008. The applicant was diagnosed with attention deficit disorder as a child, and was on medication for the disorder. The applicant was enrolled in anger management and the Army Substance Abuse Program. The applicant assured the separation authority if retained, the applicant would strive to be a mentor and an aviation warrant officer. The applicant was about to be married and desired to have financial stability and job security to care for their spouse.

b. **Board Type and Decision:** In a records review conducted on 5 September 2024, and by a 4-1 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination 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:** 12 April 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 March 2008

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

The applicant was willfully disobedient to numerous noncommissioned officers (NCOs) on divers occasions;

The applicant lied to an NCO;

The applicant made a verbal threat to an NCO;

The applicant communicated to fellow Soldiers that the applicant would like to put a bullet in the heads of two NCOs while at a range;

The applicant failed to report to the appointed place of duty;

The applicant had been counseled numerous times on their deficiencies but failed to improve their behavior;

The applicant was a constant distraction to the chain of command and fellow Soldiers; and

The applicant's conduct was prejudicial to good order and discipline in the unit and the discharge was in the best interests of the Army.

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

(4) Legal Consultation Date: 25 March 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 1 April 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 June 2007 / 3 years / In accordance with the Commander's Report. The AMHRR is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period.

b. Age at Enlistment / Education / GT Score: 22 / HS Graduate / 110

c. Highest Grade Achieved / MOS / Total Service: E-4 / 44C10, Financial Management Technician / 4 years, 2 months, 29 days

d. Prior Service / Characterizations: RA, 14 January 2004 – 19 June 2007 / HD

e. Overseas Service / Combat Service: Germany, Korea / None

f. Awards and Decorations: JSAM, AAM-4, AGCM, NDSM, GWOTSM, KDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Request for separation (undated), reflects the applicant was an inpatient at the 121st Hospital and enrolled in Anger Management training. The applicant had been rehabilitatively transferred. The record is void of the first page of the request.

Four Developmental Counseling Forms, for failing to be at appointed place of duty; disobeying an NCO; insubordinate conduct toward an NCO; being recommended for Uniform Code of Military Justice act, bar to reenlistment, and bar to reenlistment; and threatening an NCO.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Mental Status Evaluation, 6 March 2008, reflects the condition and problems presented by the applicant were not amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. The applicant had no potential for useful service under conditions of full mobilization and discharge under AR 635-200, Paragraph 5-17 was in the best interests of both the individual and the Army. The applicant was diagnosed with adjustment disorder, not otherwise specified (NOS), and alcohol abuse.

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.

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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable.

The applicant contends being diagnosed with ADD as a child and used medication for it while in service. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 6 March 2008, which indicates the applicant had no potential for useful service under conditions of full mobilization and discharge under AR 635-200, paragraph 5-17 was in the best interests of both the individual and the Army. The applicant was diagnosed with adjustment disorder, not otherwise specified, and alcohol abuse. The MSE was considered by the separation authority.

The applicant contends harassment and discrimination by members of the unit. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment before the misconduct.

The applicant contends good service.

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, Anxiety.

(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 Anxiety.

(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 applicant's misconduct. Given the nexus between Anxiety and avoidance, the applicant's Anxiety more likely than not contributed to and mitigates the FTR. However, neither an Adjustment Disorder or Anxiety has a nexus with difficulty with authority, differentiating between right and wrong, or making purposeful choices with an understanding of consequences. As such, there is no natural sequela between an Adjustment Disorder or Anxiety and willful disobedience, lying to an NCO, making a verbal threat to an NCO, or communicating to fellow soldiers about wanting to harm NCOs, so none of this misconduct is mitigated.

(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 Anxiety and Adjustment Disorder outweighed the applicant's medically unmitigated offenses of willful disobedience, lying to an NCO, making a verbal threat to an NCO, or communicating to fellow soldiers about wanting to harm NCOs.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with ADD as a child and used medication for it while in service. The Board considered this contention but determined that the applicant's ADD is not a condition which provides for potential mitigation, even under liberal guidance standards. The Board liberally considered the applicant's behavioral health record and found that the applicant's FTR offense is mitigated. However, the Board found that the available evidence did not support a conclusion that the applicant's Anxiety and Adjustment Disorder outweighed the applicant's medically unmitigated offenses of willful disobedience, lying to an NCO, making a verbal threat to an NCO, or communicating to fellow soldiers about wanting to harm NCOs. Therefore, the applicant's behavioral health conditions do not mitigate the discharge.

(2) The applicant contends harassment and discrimination by members of the unit. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant experienced harassment or discrimination.

(3) The applicant contends good service. The Board considered the totality of the applicant's record, including almost four years in service and multiple years overseas, but determined that the applicant's service does not outweigh the applicant's medically unmitigated

offenses of willful disobedience, lying to an NCO, making a verbal threat to an NCO, or communicating to fellow soldiers about wanting to harm NCOs.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Anxiety did not outweigh the medically unmitigated offenses of willful disobedience, lying to an NCO, making a verbal threat to an NCO, or communicating to fellow soldiers about wanting to harm NCOs. The Board also considered the applicant's contentions regarding experiencing harassment and discrimination and the applicant's 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:

- 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:

9/18/2024

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