

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, the discharge was improper because it was based on a small amount of time served at Fort Carson and not the five and a half years at Fort Campbell and two deployments. The applicant suffers PTSD following family stress and the move to Fort Carson.

b. **Board Type and Decision:** In a records review conducted on 29 August 2024, and by a 5-0 vote, the Board determined the discharge was inequitable based on medical mitigation for the accepted basis of separation (BOS) misconduct of AWOL and drug abuse. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable per AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a separation code of JKN and reentry code of RE-3.

Please see the Board Discussion and Determination portion 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:** 19 December 2013

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (2) and (3).

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF

(2) **Legal Consultation Date:** 21 November 2013

(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:** NIF

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

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 20 March 2008 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 19 / GED / 99
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 6 years, 9 months, 19 days
- d. **Prior Service / Characterizations:** RA, 21 June 2006 – 19 March 2008 / HD
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (14 May 2010 – 12 April 2011); Iraq (22 September 2007 – 24 November 2008)
- f. **Awards and Decorations:** ACM-CS, ARCOM, AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR-2, NATOMDL, CIB
- g. **Performance Ratings:** NA

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 15 June 2012;
From AWOL to Dropped From Rolls (DFR), effective 15 July 2012;
From DFR to PDY, effective 11 September 2012;
From Present for Duty (PDY) to Confined by Civil Authorities (CCA) effective 11 September 2012;
From CCA to PDY, effective 14 September 2012;
From PDY to AWOL, effective 14 September 2012;
From AWOL to DFR, effective 15 September 2012;
From DFR to PDY, effective 5 November 2012;
From PDY to AWOL, effective 7 August 2013;
From AWOL to DFR, effective 8 August 2013;
From DFR to PDY, effective 20 August 2013;
From PDY to AWOL, effective 21 August 2013;
From AWOL to DFR, effective 22 August 2013;
From DFR to PDY, effective 13 September 2013;
From PDY to CCA, effective 13 September 2013.

i. Lost Time / Mode of Return: 8 months, 11 days:

AWOL, 15 June 2012 – 11 September 2012 / Apprehended by Civil Authorities
AWOL, 14 September 2012 – 5 November 2012 / NIF
AWOL, 7 August 2013 – 20 August 2013 / NIF
AWOL, 22 August 2013 – 28 November 2013 / NIF

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: Application for the Review of Discharge; third-party letter; Request for Discharge in Lieu of Trial by Court-Martial.

6. POST SERVICE ACCOMPLISHMENTS: None provided 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) 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.)

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 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's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was 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 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

The evidence the applicant provided 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. The discharge was improper because it was based on a small amount of time served at Fort Carson and not the five and a half years spent at Fort Campbell. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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 suffering from PTSD. The applicant provided a third-party letter from a fellow Soldier which described the applicant's change in behavior during the applicant's second deployment and after returning from combat and supported the applicant's contention. The applicant's AMHRR does not contain any medical documents to support the contention.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Depression, Anxiety Disorder Not Otherwise Specified (NOS), Panic Disorder, Mood Disorder NOS, Traumatic Brain Injury, and Post Traumatic Stress Disorder (PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence of multiple behavioral health (BH) conditions to include in service diagnoses of Depression, Anxiety Disorder NOS, Panic Disorder, Mood Disorder NOS, and TBI. The applicant is also service connected by the VA for PTSD and TBI.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple mitigating BH conditions. While the full facts and circumstances of the separation are not included in the service record, the medical records suggests that the basis of separation was AWOL and illicit drug use. Given the nexus between Depression, Anxiety, Mood Disorder, PTSD, TBI and self-medicating with substances, the illicit drug use is mitigated. Depression and PTSD have a nexus with avoidance, so AWOLs are also mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Depression, Anxiety Disorder NOS, Panic Disorder, Mood Disorder NOS, TBI, and PTSD outweighed the AWOL and drug use basis for separation.

b. Response to Contention(s):

(1) The applicant contends good service, including two combat tours, and that he discharge was based on a small amount of time served at Fort Carson and not the five and a half years spent at Fort Campbell. The Board liberally considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Depression, Anxiety Disorder NOS, Panic Disorder, Mood Disorder NOS, TBI, and PTSD outweighing the applicant's AWOL and drug use basis for separation.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board liberally considered this contention during proceedings, but ultimately did not address it in detail based on the medical mitigation described above.

(3) The applicant contends suffering from PTSD. The Board determined that this contention was founded per the medical opine and voted to upgrade the discharge accordingly.

c. The Board determined the discharge was inequitable based on the applicant's Depression, Anxiety Disorder NOS, Panic Disorder, Mood Disorder NOS, TBI, and PTSD mitigating the AWOL and drug use misconduct that served as the BOS. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), the separation code to JKN, and the reentry code to RE-3.

d. Rationale for Decision:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000834

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's BH conditions medically mitigated the accepted BOS misconduct (AWOL and drug use). 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.

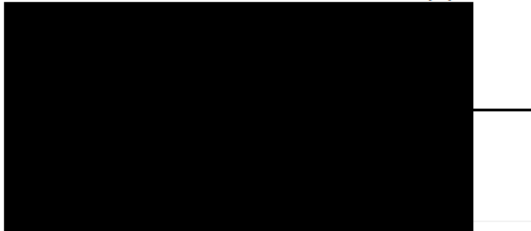
(3) The Board voted to change the reentry code to RE-3 based on the new narrative reason/SPD and BH conditions.

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:

9/6/2024



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