

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, the discharge was inequitable because it was based on an isolated incident in their 61 months of service. The applicant detailed the events surrounding their deployments, divorce, and a friend committing suicide which devastated the applicant, and led to their discharge and the subsequent diagnosis of post-traumatic stress disorder (PTSD). The applicant stated they were promoted to E-5 within five years and listed their numerous awards. Since their discharge, the applicant has completed a bachelor's degree in psychology and is working on a master's degree and ultimately a PhD, so they may help returning veterans cope with PTSD.

b. **Board Type and Decision:** In a records review conducted on 15 August 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 detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 March 2012

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 14 February 2012, the applicant was charged with:

Charge I: Violating Article 91, UCMJ, for Specification: on or about 25 January 2012, unlawfully assault Staff Sergeant G., a noncommissioned officer, then known to the applicant to be a superior noncommissioned officer who was then in the execution of their office, by rolling a live fragmentation grenade toward the said Staff Sergeant G., and saying, "Hey Sergeant, catch!"

Charge II: Violating Article 92, UCMJ, for Specification: on or about 2 January 2012, violate a lawful general order, to wit: by wrongfully taking, Mucinex DM, with the intention of obtaining an altered state of mind or an unnatural feeling of euphoria.

Charge III: Violating Article 128, UCMJ, for Specification: on or about 25 January 2012, assault Staff Sergeant G., by rolling towards them a live fragmentation grenade and saying, "Hey Sergeant, catch!"

Charge IV: Violating Article 134, UCMJ, for Specification: on or about 25 January 2012, disorderly which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

(2) Legal Consultation Date: 25 February 2012

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

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 28 February 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 January 2010 / 4 years

b. Age at Enlistment / Education / GT Score: 25 / GED / 117

c. Highest Grade Achieved / MOS / Total Service: E-5 / 68W20, Health Care Specialist / 5 years, 1 month, 1 day

d. Prior Service / Characterizations: RA, 21 February 2007 – 4 May 2008 / HD
RA, 5 May 2008 – 27 January 2010 / HD

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (9 July 2011 – 12 March 2012; Iraq (24 July 2009 – 27 August 2010)

f. Awards and Decorations: ACM-CS, ARCOM-3, AAM, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR-2

g. Performance Ratings: None

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

Developmental Counseling Forms, for abuse of duty position and unauthorized and excessive use of medication.

i. Lost Time / Mode of Return: None

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: Two Certificates of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored statement; Enlisted Record Brief; Bachelor of Arts Certificate; college transcript.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed a bachelor's degree in psychology and is working on a master's degree.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

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

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

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

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests an upgrade to honorable.

The 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. general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR is void of a mental status evaluation.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5 in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

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 good service, including two combat tours.

The applicant contends completing a bachelor's degree in psychology and is working on a master's degree. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: Adjustment Disorder with Disturbance of Conduct, Bipolar Disorder, Other Specified Trauma and Stressor Related Disorder, applicant asserted PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** Adjustment Disorder with Disturbance of Conduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that, given the nexus between trauma, diagnosed as Other Specified Trauma and Stressor Related Disorder partially related to combat, and substance use, the wrongful use of medication is mitigated. However, the misconduct surrounding the grenade incident is not mitigated. There is no nexus between combat trauma and purposefully attempting to scare or hurt others within your own group. Additionally, in-service documentation indicates the applicant was coherent and could clearly discuss the events. Moreover, post-service VA documentation outlines a conscious decision with clear motive unrelated to cognitive or psychiatric impairment. Lastly, the service-connected condition has consistently been noted to have developed after service with no indication of presence at the time of the misconduct.

(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 with Disturbance of Conduct, Bipolar Disorder, Other Specified Trauma and Stressor Related Disorder, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated assault offense.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Disturbance of Conduct, Bipolar Disorder, Other Specified Trauma and Stressor Related Disorder, and self-asserted PTSD outweighed the applicant's medically unmitigated assault offense.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the severity of the

applicant's assault offense, tossing a live grenade at an NCO in order to gauge the reaction, is a serious offense making the separation both proper and equitable.

(3) The applicant contends good service, including two combat tours. The Board considered the totality of the applicant's record, including five years of service and combat tours in Iraq and Afghanistan, but found that the applicant's service does not outweigh the applicant's medically unmitigated assault offense.

(4) The applicant contends completing a bachelor's degree in psychology and is working on a master's degree. The Board considered the applicant's post-service accomplishments but found that they do not outweigh the applicant's medically unmitigated assault offense.

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's representative may request a personal appearance hearing to address the issues before the Board. The applicant's representative 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 with Disturbance of Conduct, Bipolar Disorder, Other Specified Trauma and Stressor Related Disorder, and self-asserted Post Traumatic Stress Disorder did not outweigh the medically unmitigated assault offense. The Board also considered the applicant's contentions regarding good service, the misconduct being an isolated incident, and post-service accomplishments 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, 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000885

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:

8/22/2024

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