

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, commanders and supervisors failed to adequately counsel the applicant on their behavior and assess if the applicant could overcome their shortcomings. The applicant was unjustly discharged from the Army after two isolated incidences. The applicant was diagnosed with post-traumatic stress disorder (PTSD) and classified as completely incapacitated. The applicant has been denied valuable educational and employment opportunities. The applicant was deployed to Iraq from 14 October 2007 to 29 October 2008. Throughout their deployment, the applicant continued to stand out as a top-performing Soldier. Following a fierce competition, the applicant was chosen as the "Soldier of the Deployment." The applicant's accolades and decorations during their time in service suggest they performed admirably.

b. Board Type and Decision: In a records review conducted on 27 August 2024, and by a 3-2 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see the Board Discussion and Determination section of this document for more details regarding the Board's decision. Board member names are available upon request.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 16 March 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 16 February 2011

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 27 May 2010, the applicant disobeyed the DoD Health Information Privacy Regulation number, DoD 6025. 18R by entering their Soldier's electronic medical record approximately 12 times without authorization. Also, between on or about 1 August 2009 and 8 September 2009, the applicant committed forgery.

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

(4) Legal Consultation Date: On 17 February 2011, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 November 2007 / 6 years

b. Age at Enlistment / Education / GT Score: 20 / some college / 115

c. Highest Grade Achieved / MOS / Total Service: E-5 / 68W20, Health Care Specialist / 5 years, 7 months, 13 days

d. Prior Service / Characterizations: RA, 4 August 2005 – 29 November 2007 / HD

e. Overseas Service / Combat Service: Germany / SWA / Iraq (14 August 2007 – 29 October 2008)

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

g. Performance Ratings: 1 September 2008 – 3 February 2009 / Fully Capable
4 February 2009 – 3 February 2010 / Marginal
4 February 2010 – 3 February 2011 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 25 August 2010, on or about 27 May 2010, fail to obey a lawful order by wrongfully accessing Private First-Class M., Protected Health Information approximately 12 times. The punishment consisted of forfeiture of \$563; and extra duty and restriction for 14 days (suspended).

CG Article 15, 2 November 2009, on or about 1 August 2009 and 8 September 2009, with intent to defraud, utter a certain writing in the following words and figures, to wit: "Assigned to: USA MEDDAC (W4LMAC) Ft. Eustis VA 23604" and "pinpoint assignment is to MEDDAC at Fort. Eustis" and "CDR, US MEDDAC Fort. Eustis [sic] (W4LMAC) Fort Eustis, VA 23604", a writing which would, if genuine, apparently operate to the legal harm of another, which said writing, was, as the applicant then well knew, falsely made and which was used to the legal harm of Colonial Properties Trust, dba Colonial Village at Waterford, in which the applicant caused Colonial Properties Trust, dba Colonial Village at Waterford to release the applicant from further financial responsibility. The punishment consisted of a forfeiture of \$544 and restriction (suspended) extra duty for 14 days however any amount of the extra duty to exceed 7 days is suspended.

Memorandum Thru, Health Insurance Portability and Accountability Act (HIPAA) Complaint Findings, 25 June 2010, reflects on 28 May 2010, PFC M., contacted the Kenner Army Health Clinic (KAHC) HIPAA privacy officer, M.B., for assistance with concerns of a possible HIPAA violation. PFC M., filed a written complaint which alleged their direct supervisor, the applicant accessed their Protected Health Information without their consent. The following facts were discovered. On 27 May 2010, audit revealed the applicant accessed PFC M., Armed Forces

Health Longitudinal Technology Application (AHLTA) information approximately twelve (12) different times in the areas of current encounters, previous encounters, radiology, and lab. The time frame for this access was between 0744 and 1014 hours. The audit also reveals access by the applicant to a lab result in PFC M., Armed Forces Health Longitudinal Technology Application information. The "broken glass" for lab results means the applicant viewed sensitive lab results. During further review of AHLTA encounters, there was no indication of labs ordered for PFC M., appointment on 27 May 2010. The investigative officer recommended the applicant should attend a rigorous HIPAA training program under the supervision of the HIPAA Privacy and Security team and the KAHC Commander consider all options available, to include actions under the Uniform Code of Military Justice.

Three Developmental Counseling Forms, for failure to be at appointed place of duty; HIPAA violation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Report of Behavioral Health Evaluation (BHE); 10 September 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The evaluation included a medical diagnosis.

Department of Veteran Affairs Benefits letter, 22 March 2014, reflects a rating of 100 percent and a medical diagnosis.

Department of Veterans Affairs Medical Records, printed on 14 July 2015, reflects a medical diagnosis.

(2) AMHRR Listed: BHE as described in previous paragraph 4j(1).

Report of Medical Examination, 16 September 2010, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical diagnosis.

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; lawyers brief; two Record of Proceedings under Article 15, UCMJ; two Enlisted Records Briefs; six letters of support; two Army Commendation Medal Certificates; three Army Achievement Medal Certificates; Certificate of Achievement; Letter of Commendation; Warrior Leaders Course Certificate; Order of the Golden Spur Certificate; Report of Behavioral Health Evaluation; Department of Veterans Affairs benefits letter; medical records.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for their mental health from the VA.

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 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.

(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 14-12b, 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends being diagnosed with post-traumatic stress disorder (PTSD) and classified as completely incapacitated. The applicant provided a Report of Behavioral Health Evaluation (BHE); Department of Veteran Affairs Benefits letter and Department of Veterans Affairs Medical Records. All documents reflecting a medical diagnosis. The AMHRR Includes a Report of Behavioral Health Evaluation (BHE) and a Report of Medical Examination. The evaluations included a medical diagnosis. All the medical documents in the AMHRR were considered by the separation authority.

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 commanders and supervisors failed to adequately counsel the applicant on their behavior and assess if the applicant could overcome their shortcomings. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The evidence of the AMHRR shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 good service, including a combat tour. The third-party statements provided with the application reflect the applicant to be professional, dependable, reliable, hard-working, and courteous. The applicant always went above and beyond to complete the mission. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends seeking help for their mental health from the VA. 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 found that, based upon the Board's Medical Advisor's opine, and a review of the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation, that the applicant has the following potentially mitigating diagnoses/experiences: PTSD; Depression NOS; and Adjustment Disorder w/ Anxiety and Depressed Mood.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found, based upon the opine of the Board's Medical Advisor, and a review of the records, that the applicant is 100 percent service connected for PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board applied liberal consideration, to include consideration of the Board's Medical Advisor's opine, and determined that the applicant's behavioral health conditions do not mitigate the discharge. The offenses of wrongfully accessing medical records on multiple instances and forgery are not mitigated as the misconduct is not natural sequela of PTSD, Depression, or Adjustment Disorder.

(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 PTSD, Depression, and Adjustment Disorder outweighed the medically unmitigated basis of separation offenses (wrongfully accessing medical records on multiple instances and forgery).

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD and classified as completely incapacitated. The Board liberally considered this assertion and determined that the available evidence (including the medical record) did not support a conclusion that the applicant's PTSD (and/or other diagnosed BH conditions) outweighed the medically unmitigated basis of

separation offenses. There is no natural sequela between the behavioral health conditions and wrongfully accessing medical records or forgery.

(2) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record, including length/quality/combat service and determined that the totality of the record did not substantially outweigh the medically unmitigated basis of separation offenses.

(3) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that the narrative reason for separation is proper and equitable given that the applicant wrongfully accessed medical records on 12 occasions and forged orders for personal financial gain.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined that the applicant's misconduct was not isolated, rather it took place over a period of months and was contrary to Army Values and expected conduct of an NCO.

(5) The applicant contends commanders and supervisors failed to adequately counsel the applicant on their behavior and assess if the applicant could overcome their shortcomings. The Board considered this contention and determined that the applicant was an NCO and forgery is contrary to expected conduct. Thus, specific counseling regarding not committing forgery was not required. The board also determined that an NCO within the medical field would have been acutely aware of the sensitivity of assessing medical records for unauthorized reasons. Additionally, if the NCO was in doubt, clarity could have been sought.

(6) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

(7) 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.

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 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 behavioral health conditions did not outweigh the medically unmitigated basis of separation offenses (wrongfully accessing medical records on multiple occasions and forgery). The Board considered the contentions regarding good service, the misconduct being an isolated incident, and a lack of rehabilitation by command but found them unsubstantiated. The totality of the record did not outweigh the unmitigated offenses and there was no evidence of failings on behalf of the command. The applicant did not present any issues of impropriety for the Board's

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000892

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 Honorable characterization.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts. The reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change based on the behavioral health conditions. The current code is also 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:

9/25/2024

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