

**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 the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, serving honorably for six years and receiving two Army Good Conduct Medals. The applicant claims they were bullied by their unit after being promoted through the automatic promotion list. The applicant claims they were stressed at home and broke down because they had no one to confide in. The applicant desires to use the GI Bill to attend school.

b. **Board Type and Decision:** In a records review conducted on 27 August 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more details regarding the Board's decision.*

*Board member names available upon request.*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 3 October 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 May 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 3 October 2012, the applicant was disrespectful in language toward a senior noncommissioned officer. On or about 9 December 2012, the applicant was derelict in the performance of their duties, by failing to maintain vigilance while on guard duty. On 12 August 2012, the applicant was derelict in the performance of their duties, by failing to log request for recovery assets.

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

(4) **Legal Consultation Date:** 3 June 2013

(5) **Administrative Separation Board:** On 17 July 2013, the applicant was notified to appear before an administrative separation board and advised of rights.

On 21 August 2013, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the two reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

The separation authority approved the findings and recommendations of the administrative separation board.

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

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 10 December 2010 / 2 years, according to the commander's report.

**b. Age at Enlistment / Education / GT Score:** 24 / High School Graduate / 123

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 35F20, Intelligence Analyst / 8 years, 8 days

**d. Prior Service / Characterizations:** RA, 26 September 2005 – 21 April 2008 / HD  
RA, 22 April 2008 – 9 December 2010 / HD

**e. Overseas Service / Combat Service:** Japan, Korea, SWA / Afghanistan (29 May 2012 – 15 January 2013)

**f. Awards and Decorations:** ACM-CS, AAM-2, AGCM-2, NDSM, GWOTSM, KDSM, NCOPDR, ASR, OSR-4, NATOMDL

**g. Performance Ratings:** 1 September 2011 – 4 June 2012 / Fully Capable  
5 June 2012 – 1 December 2012 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 25 November 2012, for on 3 October 2012, the applicant was disrespectful in language toward a senior noncommissioned officer then known by the applicant to be a superior noncommissioned officer, who was then in the execution of their office, by saying to them, "is that an order," or words to that effect, with a sarcastic tone of voice. On or about 12 August 2012, were derelict in the performance of their duties in which the applicant negligently failed to log a request for recovery assets into the duty log and to notify the responsible officer of said request, as it was their duty to do. On or about 16 October 2012, the applicant was derelict in the performance of their duties in which the applicant willfully failed to maintain constant vigilance while detailed to monitor security and communications systems within the Base Defense Operations Center, as it was their duty to do. The punishment consisted of a forfeiture of \$621 and extra duty for 14 days.

FG Article 15, 30 December 2012, on or about 9 December 2012, the applicant was derelict in the performance of their duties, by failing to maintain vigilance while on guard duty. The punishment consisted of a reduction to E-2; forfeiture of \$835 pay per month for two months (suspended); and extra duty and restriction for 45 days and oral reprimand.

Numerous Developmental Counseling Forms, for various acts of misconduct.

**i. Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 21 March 2013, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The evaluation included a medical diagnosis.

Report of Medical History, 22 April 2013, 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.

**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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant claims being bullied by their unit after being promoted through the automatic promotion list. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade 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.

**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: Depression, Adjustment Disorder, Insomnia, Adjustment Disorder with Anxiety and Prolonged Depressed Mood, and Adjustment Disorder with Disturbance of Conduct.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with Depression during service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the misconduct. The applicant's misconduct is not mitigated by depression as the diagnoses was secondary to misconduct that resulted in the applicant receiving UCMJ action and Bar to Reenlistment. The misconduct is not mitigated by the diagnoses of the various Adjustment Disorders because there is no evidence the conditions were of a severity to impact judgement, cognition, or behavior and did not impair the ability to differentiate between right and wrong and adhere to the right. While there is the possibility that the applicant's misconduct of losing vigilance while on duty and failing to log request for recovery assets may be associated with insomnia given the nexus between insomnia and memory problems, it is more likely than not that the applicant's sleep problems were related to video-gaming habits and poor sleep-hygiene. This conclusion is drawn from records reflecting the applicant briefly sought treatment for the issues but chose to not engage in a way to facilitate meaningful change. Additionally, during an SRP, the applicant reported that the sleep problems did not impact the ability to function, maintain alertness around weapons, or perform duties effectively. As such, the misconduct is also not mitigated by Insomnia.

(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 Depression, Adjustment Disorder, Insomnia, Adjustment Disorder with Anxiety and Prolonged Depressed Mood, and/or Adjustment Disorder with Disturbance of Conduct outweighed the applicant's medically unmitigated offenses of disrespect toward an NCO and dereliction of duties.

**b. Response to Contention(s):**

(1) The applicant contends being bullied by their unit after being promoted through the automatic promotion list. The Board considered this contention and found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion of bullying or harassment by the unit.

(2) The applicant contends good service, including a combat tour. The Board considered the applicant's service record over eight years, including overseas tours and combat service, but found that the totality of the record did not outweigh the medically unmitigated offenses of disrespect toward an NCO and dereliction of duties.

(3) 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 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.

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 Depression, Adjustment Disorder, Insomnia, Adjustment Disorder with Anxiety and Prolonged Depressed Mood, and Adjustment Disorder with Disturbance of Conduct did not outweigh the medically unmitigated offenses of disrespect toward an NCO and dereliction of duties. The Board considered the applicant's contentions regarding false accusations and bullying and found both unsupported by the current evidentiary record. 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 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 given the behavioral health conditions. 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:**

8/28/2024

**X**

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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)

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210000893**

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