

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, suffering from mental and substance abuse prior to their enlistment and similar problems after Advance Individual Training (AIT), drinking substance abuse, and anger outbursts and emotional instability. Since their discharge the applicant has spent time in three rehabilitation transition housing. The applicant is now working and pursuing a career in substance abuse or case management and has completed anger management.

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 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 16 May 2007

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 8 February 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant went AWOL five times.

The applicant disobeyed and disrespected an NCO.

The applicant was drinking underage two times.

The applicant violated Brigade Policy Memorandum number 17, two times.

The applicant failed to report two times.

The applicant made a false statement.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) Legal Consultation Date: 8 February 2007

(5) Administrative Separation Board: On 8 February 2007, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 11 May 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 January 2006 / 4 years

b. Age at Enlistment / Education / GT Score: 20 / GED / 94

c. Highest Grade Achieved / MOS / Total Service: E-1 / 25L10, Cable Systems Installer/Maintainer / 11 months / 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 25 May 2006, for on or about 5 May 2006, disobeyed a lawful order; on or about 5 May 2006, was disrespectful in language toward Drill Sergeant (DS) B., a 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, "fuck the drill sergeants" or words to that effect. On or about 5 May 2006, fail to obey a lawful order by wrongfully consuming alcoholic beverages under the age of 21. On or about 5 May 2006, wrongfully possess and consume alcohol while under the age of 21. On or about 22 April 2006, disobeyed a lawful order by wrongfully consuming alcoholic beverages under the age of 21. On or about 22 April 2006, wrongfully possess and consume alcohol while under the age of 21. The punishment consisted of forfeiture of \$274 and extra duty and restriction for 14 days.

FG Article 15, 11 August 2010, for on or about 30 June 2006, without authority, absent oneself from their unit and did remain so absent until on or about 2 August 2006. The punishment consisted of forfeiture of \$636 pay per month for two months; and extra duty and restriction for 45 days.

Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I Article 86: UCMJ

Specification 1: On or about 8 October 2006, without authority, absent oneself from their unit and did remain so absent until on or about 16 December 2006. Plea: Guilty; Finding: Guilty

Specification 2: On or about 16 December 2006, without authority, absent oneself from their unit and did remain so absent until on or about 16 January 2007. Plea: Guilty; Finding: Guilty

The sentence adjudged: 8 February 2007; Forfeiture 2/3 pay; confinement for 30 days, credit toward post trail confinement is 17 days.

Eight Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 30 June 2006;
From AWOL to Present for Duty (PDY), effective 2 August 2006;
From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 8 October 2006;
From AWOL to From Dropped From Rolls (DFR), effective 7 November 2006;
Return to Military Control to Absent Without Leave (AWOL), effective 16 December 2006;
From AWOL to Present for Duty (PDY), effective 17 January 2007;
From AWOL to Present for Duty (PDY), effective 22 January 2007; and
From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 23 January 2007.

Four Developmental Counseling Forms, for AWOL; failure to report; disobeying a lawful order and a false official statement.

i. Lost Time / Mode of Return: 4 months, 28 days:

AWOL, 30 June 2006 – 2 August 2006 / NIF
AWOL, 8 October 2006 – 7 November 2006 / NIF
AWOL, 16 December 2006 – 7 January 2007 / NIF
AWOL, 19 January 2007 – 22 January 2007 / NIF
AWOL, 17 March 2007 – 16 May 2007 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical Examination, 8 December 2005, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation did not include a medical diagnosis.

Report of Mental Status Evaluation, 1 March 2007, 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 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: The applicant has spent time in three rehabilitation transition housing units and is now working and pursuing a career in substance abuse or case management and has completed anger management treatment.

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 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 14-12c 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 waivable. 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 suffering from mental and substance abuse prior to their enlistment and similar problems after Advance Individual Training (AIT), drinking substance abuse, and anger outbursts and emotional instability. The applicant did not submit any evidence, other than the applicant's statement to support the contention. The applicant's AMHRR includes the applicant's initial Report of Medical Examination, 8 December 2005, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation did not include a medical diagnosis. The Report of Mental Status Evaluation, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The separation authority considered the mental status evaluation.

The applicant contends having spent time in three rehabilitation transition housing and now working and pursuing a career in substance abuse or case management and has completed anger management. 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/experiences: The applicant self-asserts Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant self-asserts his misconduct was related to Other Mental Health Issues.

(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 or excuse the discharge. A review of the records is void of any BH diagnoses or treatment history for the applicant prior to enlistment, during service, or post-service, and the applicant provided no documentation supporting the assertion. Additionally, the applicant's pre-enlistment Medical Examination dated 8 December 2005 reflects the applicant did not report a history of BH diagnosis or treatment. In absence of documentation supporting

the assertion, there is insufficient evidence to establish that the misconduct was related to or mitigated by Other Mental Health Issues and comorbid Substance Abuse.

(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 self-asserted mental health issues outweighed the medically unmitigated offenses of AWOL, disobeying lawful orders and regulations, disrespect toward an NCO, failures to report, and making a false official statement.

b. Response to Contention(s):

(1) The applicant contends suffering from mental and substance abuse prior to their enlistment and similar problems after Advance Individual Training (AIT): drinking, substance abuse, and anger outbursts and emotional instability. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's self-asserted mental health issues outweighed the applicant's medically unmitigated offenses of AWOL, disobeying lawful orders and regulations, disrespect toward an NCO, failures to report, and making a false official statement.

(2) The applicant contends having spent time in three rehabilitation transition housing and now working and pursuing a career in substance abuse or case management and has completed anger management. The Board considered the applicant's favorable post-service circumstances and accomplishments but determined that they do not outweigh the applicant's medically unmitigated offenses of AWOL, disobeying lawful orders and regulations, disrespect toward an NCO, failures to report, and making a false official statement.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's self-asserted mental health issues did not outweigh the applicant's medically unmitigated offenses of AWOL, disobeying lawful orders and regulations, disrespect toward an NCO, failures to report, and making a false official statement. The Board considered the applicant's contention of post-service accomplishments but found that the totality of the evidentiary 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranting an 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.

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:

8/29/2024

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