

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

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

The applicant seeks relief contending, in effect, they were to receive a general (under honorable conditions) discharge, but due to a post regulation, the applicant had to appear before a court-martial. The applicant states senior NCOs and an officer provided supporting statements on their behalf. The applicant contends they have documentation showing numerous visits to behavioral health and were not psychiatrically cleared for administrative separation, but rather their condition warranted disposition through medical channels.

b. **Board Type and Decision:** In a records review conducted on 15 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

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:** 30 January 2014

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) includes partial facts of the case separation file.

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 2 June 2011, the applicant was charged with:

Charge I: Violating Article 85, UCMJ, Specification: for being in Desertion from on or about 2 June 2011, without authority, and with the intent to stay there from permanently, absent oneself from this unit.

Charge II: Violating Article 86, UCMJ, Specification: for being AWOL from On or about 3 May 2011, without authority, and with the intent to stay there from permanently, absent oneself from this unit.

- (2) **Legal Consultation Date:** NIF
- (3) **Basis for Separation:** NIF
- (4) **Recommended Characterization:** NIF
- (5) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 3 December 2009 / NIF
- b. **Age at Enlistment / Education / GT Score:** 22 / GED / 119
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 5 years, 24 days
- d. **Prior Service / Characterizations:** RA, 23 January 2007 – 2 May 2011 / HD
- e. **Overseas Service / Combat Service:** SWA / Iraq (27 November 2007 – 5 January 2009)
- f. **Awards and Decorations:** ICM-2CS, ARCOM, VUA, AGCM, NDSM, GWOTSM, ASR, OSR, CIB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 3 May 2011;
 From AWOL to Dropped From Rolls (DFR), effective 2 June 2011;
 From Present for Duty (PDY), to Absent Without Leave (AWOL), effective 9 June 2011;
 From AWOL to Dropped From Rolls (DFR), effective 10 June 2011;
 From Present for Duty (PDY) to Confined by Civil Authorities (CMA), effective 19 March 2013;
 From Dropped From Rolls (DFR) to Present for Duty (PDY), effective 19 March 2013;
 From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 19 March 2013;
 From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 20 March 2013;
 and
 From AWOL to From Present for Duty (PDY), effective 17 April 2013;

- i. **Lost Time / Mode of Return:** 1 year, 11 months, 13 days:

AWOL, 3 May 2011 – 8 June 2011 / NIF
 AWOL, 10 June 2011 – 17 April 2013 / NIF

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

- (1) **Applicant provided:** 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.

S.B. Licensed Professional Counselor letter, 3 November 2014, reflects a medical diagnosis.

(2) AMHRR Listed: Chronological Record of Medical Care, 22 June 2010, reflects 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; two self-authored letters; three letters of support; ERB; S.B. Licensed Professional Counselor letter; DA Form 2823; Court Martial Charges Transmittal form; S.R. Defense Counsel statement.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help from the Post Traumatic Stress Disorder Trauma Treatment Center.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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 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.

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

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

(7) 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.

f. 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.

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

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

The applicant requests an upgrade to honorable.

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of general (under honorable conditions).

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, would have voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. The request is not in the AMHRR, however, in this request, the applicant would have admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable

conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends they have documentation showing numerous visits to behavioral health and not psychiatrically cleared for administrative separation, but rather their condition warranted disposition through medical channels. The applicant provided a Report of Medical History, 22 April 2013, and a S.B. Licensed Professional Counselor letter, 3 November 2014, all documents included a diagnosis. The AMHRR includes a Chronological Record of Medical Care, 22 June 2010, reflecting a medical diagnosis. The Chronological Record of Medical Care, was considered by the separation authority. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

The applicant contends they were supposed to receive a general (under honorable conditions), discharge, but because of a post regulation, the applicant had to appear before a court-martial. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. 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 applicant's chain of command spoke highly of the applicant's dependability and dedication to completing the mission.

The applicant contends seeking help from the Post Traumatic Stress Disorder Trauma Treatment Center. 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 and PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** A review of the applicant's medical record showed the applicant held in-service diagnoses Adjustment Disorder and PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's misconduct is mitigated given the combat trauma occurred before the AWOL, combat symptoms were documented prior to the AWOL, the ultimate service connection for combat related PTSD,

and the nexus between PTSD and avoidance.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL offense.

b. Response to Contention(s):

(1) The applicant contends seeking help from the Post Traumatic Stress Disorder Trauma Treatment Center. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends they have documentation showing numerous visits to behavioral health and was not psychiatrically cleared for administrative separation, but rather their condition warranted disposition through medical channels. The Board determined that the applicant's contention that the discharge should have been conducted through medical channels does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(3) The applicant contends they were supposed to receive a general (under honorable conditions) discharge, but because of a post regulation, the applicant had to appear before a court-martial. The Board considered this contention but ultimately did not address it after determining that an upgrade to honorable characterization of service was warranted based on medical mitigation.

(4) The applicant contends good service, including a combat tour. The Board considered the applicant's combat service and the PTSD incurred in its decision to upgrade the applicant's discharge.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's misconduct of AWOL. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

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(3) The RE code will not change, given the applicant's 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: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

8/22/2024



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