

1. Applicant's Name:

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

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

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

The applicant seeks relief contending, in effect, there were mitigating factors surrounding the applicant's conduct which were never brought to the attention of the Separation Authority. The applicant had recently married and took a home pregnancy test which showed a positive result. Before visiting a physician, the applicant informed the NCO they were pregnant. The NCO informed the command of the pregnancy. The command directed the applicant to obtain a sick slip. The applicant went to the doctor where blood was drawn to perform a pregnancy test, the test was negative. The applicant did not inform the command and was scared and embarrassed the official result was not what the applicant expected. Instead of immediately informing the command there was a negative result, the applicant went to the USAPA site, downloaded the proper form, and turned it in. The applicant was not trying to deceive the Army, they were scared to inform the superiors they were not actually pregnant. A few weeks later, the applicant told the command they had a miscarriage. The command found out the sick slip was false, and the applicant admitted the claim was false; however, did not explain the whole situation. Since being discharged the applicant has accomplished many things. They have been married for five years, has two children, obtained employment as a Paralegal with a private sector law firm. The applicant has completed a bachelor's degree in Paralegal Studies with Liberty University and has been accepted to Belmont University College of Law. The applicant knows what they did was wrong; however, never acted to cheat the Army. The applicant was foolishly attempting to avoid trouble when simply being honest from the beginning would have been the best thing to do.

b. **Board Type and Decision:** In a records review conducted on 21 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 detail 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:** 24 February 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 18 December 2009

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant made false statements to CPT M. on several occasions and for altering a physical profile form.

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

(4) Legal Consultation Date: 22 December 2009

(5) Administrative Separation Board: NA

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

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 November 2008 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / GED / 113

c. Highest Grade Achieved / MOS / Total Service: E-2 / 27D10, Paralegal Specialist / 2 years, 2 months, 18 days

d. Prior Service / Characterizations: USAR, 7 December 2007 – 3 November 2008 / NA
IADT, 15 January 2008 – 20 June 2008 / UNC
(Concurrent Service)

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Physical Profile, 24 March 2009, reflects the applicant was pregnant with an estimated due date of 26 December.

Memorandum Report of Proceedings by Investigating Officer (IO), 9 October 2009, reflects the findings of the informal investigation. The Specific findings:

Issue #1: Determine whether or not the applicant knowingly lied to the chain of command about being pregnant. Finding: Substantiated.

Issue #2: Determine whether or not the applicant falsified a pregnancy profile. Finding: Substantiated.

Issue #3: Determine whether or not the applicant lied to Heidelberg Army medical personnel about having a miscarriage with D&C (Dilation & Curettage). Finding: Substantiated.

The IO recommended the company commander exercise authority to administer either non-judicial or judicial proceedings and render disciplinary actions commensurate with the gravity of the infraction(s) i.e. Making False Official Statements, in violation of Article 107, UCMJ, and to consider the applicant's total record, and any information the applicant wishes to submit on their behalf. Consideration should also note the applicant's actions coincidentally occurred during the time frame the unit was notified of sourcing for OEF.

FG Article 15, 10 November 2009, on or about 22 June 2009 with intent to deceive, make to CPT J. K. M. a certain official statement, which statement was totally false, and was then known by the applicant to be so false x2; and on or about 24 March 2009, with intent to defraud, falsely alter a certain writing. The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months (suspended); and an oral reprimand.

Several Developmental Counseling Forms, for reporting late to formation; failing to shave; insubordination; lost identification card; and leaving from appointed place of duty without authority.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Mental Status Evaluation (MSE), 14 December 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The evaluation reflects the applicant was in treatment for depression, symptoms of PTSD and Social Phobia. The evaluation was consistent with the aforementioned 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: Application for the Review of Discharge; self-authored statement; Certificate of Release or Discharge from Active Duty; two third-party letters; college transcript; Belmont University letter; NPRC letter; AMHRR.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been married for five years, has two children, obtained employment as a Paralegal with a private sector law firm. The applicant has completed a bachelor's degree in Paralegal Studies with Liberty University and has been accepted to Belmont University College of Law.

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 contends there were mitigating factors surrounding the applicant's conduct which were never brought to the attention of the Separation Authority. The applicant had recently married and took a home pregnancy test which showed a positive result. Before visiting a physician, the applicant informed the NCO they were pregnant. The NCO informed the command of the pregnancy. The command directed the applicant to obtain a sick slip. The applicant went to the doctor where blood was drawn to perform a pregnancy test, the test was negative. The applicant did not inform the command and was scared and embarrassed the

official result was not what the applicant expected. Instead of immediately informing the command there was a negative result, the applicant went to the USAPA site, downloaded the proper form, and turned it in. A few weeks later, the applicant told the command they had a miscarriage. 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 ever sought assistance before committing the misconduct, which led to the separation action under review. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application reflect the applicant's good character while serving in the Army and the hard work the applicant has done since being discharged.

The applicant has been married for five years, has two children, obtained employment as a Paralegal with a private sector law firm. The applicant has completed a bachelor's degree in Paralegal Studies with Liberty University and has been accepted to Belmont University College of Law. 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: Adjustment Disorder, Major Depression, Social Phobia.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and Social Phobia.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and Social Phobia. However, there is no natural sequela between an Adjustment Disorder, Major Depression, or Social Phobia and making false statements or altering a physical profile form since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's pre-service TBI and PTSD associated with a pre-service trauma are noted, but liberal consideration does not apply given that the conditions originated pre-service without evidence of exacerbation by military service. Furthermore, the ability to distinguish between right and wrong is not impaired by PTSD or TBI. Accordingly, none of the applicant's BH conditions provide mitigation for the basis of separation.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends there were mitigating factors surrounding the applicant's conduct which were never brought to the attention of the Separation Authority. The Board considered this contention and liberally considered the evidence before the Board. Ultimately the Board found there was insufficient evidence to support the applicant had mitigating factors surrounding the applicant's misconduct. The Board determined the discharge is proper and equitable.

(2) The applicant has been married for five years, has two children, obtained employment as a Paralegal with a private sector law firm. The applicant has completed a bachelor's degree in Paralegal Studies with Liberty University and has been accepted to Belmont University College of Law. The Board considered this contention and determined that the applicant's post-service accomplishments do not outweigh the applicant making a false official statement and altering a physical profile based on the deliberate nature and seriousness of the applicant's offenses.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the 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 of all the evidence before the Board, the applicant's Adjustment Disorder, Major Depression, and Social Phobia did not excuse or mitigate the offenses of making a false official statement and altering a physical profile. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000918

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:

11/16/2024

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