

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 honorable. The applicant is considered for a change to the narrative reason for separation and reentry eligibility code.

The applicant seeks relief contending, in effect, the reason for abnormal behavior and failure to duty were the result of medical conditions and the actions were not under the applicant's control. The chain of command did not help the applicant and proceeded with harassment and punishment. The applicant was an excellent Soldier and had never been in any trouble before these complications due to the medical conditions. The applicant was diagnosed with bipolar disorder in 2017. During active duty, this was thought to simply be depression. The applicant was diagnosed with anxiety in 2007 and hypersomnia in 2008. The applicant had no control over the symptoms of these conditions. The applicant is currently in therapy for these conditions and hopes to receive help from the VA as well. The applicant would like an upgrade to receive VA benefits and the applicant believes their service was honorable and faced circumstance which were far too challenging for the applicant to resolve on their own, given their medical conditions.

b. **Board Type and Decision:** In a records review conducted on 15 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 (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 6 November 2008

c. **Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** Under Other Than Honorable Conditions
- (4) **Legal Consultation Date:** 29 September 2008
- (5) **Administrative Separation Board:** NA

(6) Separation Decision Date / Characterization: 27 October 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 March 2006 / 3 years, 17 weeks / There appears to be an error on the applicant's DD Form 214, block 12a, reflects 21 March 2006; however, the applicant's DD Form 4, reflects 2 March 2006.

b. Age at Enlistment / Education / GT Score: 20 / GED / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 19K10, M1 Armor Crewman / 2 years, 6 months, 26 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 9 September 2008; and,

From AWOL to PDY, effective 28 September 2008.

Charge Sheet, 29 September 2008, reflects the applicant was charged with:

Charge I: Violating Article 86, UCMJ.

Specification 1: On or about 3 September 2008, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 2: On or about 9 September 2008, without authority, absent oneself from the unit and did remain so absent until on or about 28 September 2008.

Charge II: Violating Article 91, UCMJ. The Specification: On or about 4 September 2008, was disrespectful in language toward SSG R. H.

Two Developmental Counseling Forms, for disrespect toward a Noncommissioned Officer x2; failure to be at the appointed place of duty; 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: 19 days (AWOL, 9 September 2008 – 28 September 2008) / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: American Sleep Medicine letters, 15 May and 27 June 2008, reflect the applicant was receiving treatment and was under care for a sleep disorder. The letter states the applicant's condition.

Community Care Services letter, 16 September 2019, reflects the applicant was participating in therapeutic and psychiatric services for a mental health diagnosis. The letter contains a diagnosis.

(2) AMHRR Listed: None

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: Two Applications for the Review of Discharge; three sworn statements; two Developmental Counseling Forms, five third-party letters; self-authored statement; CCS Letter; charge sheet; two VA Letters; AAM Certificate; two American Sleep Medicine letters; two Developmental Counseling Forms.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is currently in therapy for their conditions.

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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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 contends good service and had never been in any trouble before these complications due to the medical conditions.

The applicant contends the reason for abnormal behavior and failure to duty were the result of medical conditions and the actions were not under the applicant's control. The applicant provided two American Sleep Medicine letters, 15 May and 27 June 2008, which reflect the applicant was receiving treatment and was under care for a sleep disorder. The letter states the applicant's condition. A Community Care Services letter, 16 September 2019, reflects the applicant was participating in therapeutic and psychiatric services for a mental health diagnosis. The letter contains a diagnosis. The third-party letters provided reflect the applicant's medical conditions as well as speak of the applicant's character. The applicant's AMHRR contains no documentation of a medical diagnosis.

The applicant contends the chain of command did not help the applicant and proceeded with harassment and punishment. 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 an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant is currently in therapy for their conditions. 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: The applicant was diagnosed in-service with Adjustment Disorder, Anxiety Disorder NOS, and Depression. The applicant was diagnosed with Hypersomnia.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Adjustment Disorder, Anxiety Disorder NOS, and Depression with FAP involvement as an offender. The applicant was also diagnosed with Hypersomnia.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that FTRs could have been related to the sleep disorder. While the in-service diagnosis of Depression is not believed to be directly related to the additional misconduct, there is the possibility depressive symptoms contributed as they can result in irritability, loss of motivation, decreased performance or commitment to responsibilities, forgetfulness, etc. However, the in-service Adjustment Disorder it is not mitigating as it is a low level, temporary in this case, difficulty adjusting to stressors that does not impact ability to follow through and perform.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety Disorder NOS, and Depression outweighed the medically unmitigated misconduct: AWOL and disrespect to an NCO.

b. Response to Contention(s):

(1) The applicant contends good service and had never been in any trouble before these complications due to the medical conditions. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety Disorder NOS, and Depression outweighed the applicant's discharge due to the applicant holding an honorable characterization of service, a narrative reason of Misconduct (Minor Infractions), and a reentry eligibility code of RE-3. The Board found that the applicant's discharge, after being upgraded by a prior ADRB, is proper and equitable.

(2) The applicant contends the reason for abnormal behavior and failure to duty were the result of medical conditions and the actions were not under the applicant's control. The Board considered this contention but determined that the appropriate medical mitigation was applied by a prior ADRB and that further upgrade is not warranted.

(3) The applicant contends the chain of command did not help the applicant and proceeded with harassment and punishment. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant experienced harassment or arbitrary punishment from the chain of command.

(4) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(5) The applicant is currently in therapy for their conditions. The Board is glad to know that the applicant is taking treatment but did not find that this fact warranted further discharge upgrade.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of 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 the applicant holds an honorable characterization due to an upgrade from a prior ADRB. Further relief is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as 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:

8/22/2024

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