

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, being unfairly targeted by the applicant's first sergeant (1SG) with more excessive scrutiny than the other Soldiers. The applicant was written up for minor infractions, while other Soldiers were not being written up for similar infractions. The applicant is not trying to imply the applicant did not make mistakes, but the majority of them were very minor and were trumped up so the applicant would accumulate a paper trail. The only serious incident was when the applicant's Xbox stopped working and the applicant tried to return the Xbox to the post exchange for a new one. The applicant deserved punishment for the incident. The applicant was a good Soldier and did the applicant's job. The applicant would like to have the characterization reflect the majority of the applicant's service, not just a few moments of poor judgment of a young person. The applicant appreciates the opportunity to plead their case.

b. **Board Type and Decision:** In a records review conducted on 9 July 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 / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 March 2004

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 19 January 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons:

Numerous counselings and disciplinary actions had been administered in regard to the duties and subsequent violations as a Chaplain's Assistant and a Soldier in the Army; all of the efforts have failed to rectify and rehabilitate the applicant's behavior. Several nonjudicial punishments have been processed:

Company Grade Article 15, 12 September 2003, found guilty of Article 86, UCMJ;

Vacation of Suspension, 27 September 2003, found guilty of Article 86, UCMJ;

Company Grade Article 15, 25 October 2003, found guilty of Article 121, UCMJ;

Field Grade Article 15, 15 December 2003, found guilty of Articles 86, 90, 91, 92, and 107 UCMJ; and

Vacation of Suspension, 9 January 2004, found guilty of Articles 86 and 92, UCMJ.

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

(4) Legal Consultation Date: 27 January 2004

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 July 2003 / NIF (OAD)

b. Age at Enlistment / Education / GT Score: 22 / HS Graduate / 110

c. Highest Grade Achieved / MOS / Total Service: E-4 / 56M10, Chaplain Assistant / 3 years, 4 months, 27 days

d. Prior Service / Characterizations: USAR, 1 November 2000 – 6 July 2003 / NA
IADT, 7 March 2001 – 7 July 2001 / UNC
(Concurrent Service)

e. Overseas Service / Combat Service: CENTA / Uzbekistan (29 July 2003 – 1 March 2004)

f. Awards and Decorations: NDSM, AFRM-MD, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Company Grade Article 15, 11 September 2003, for in Uzbekistan, failing to go at the time prescribed to the appointed place of duty, to wit: Night Guard Duty (7 September 2003). The punishment consisted of a reduction to E-3; forfeiture of \$336 pay; and extra duty for 14 days. The applicant appealed the Article 15 and the appellate authority granted the appeal as follows: Reduction to E-3 (suspended) and extra duty for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 27 September 2003, reflects the suspended portion of the punishment imposed on 14 September 2003, was vacated for: Article 86, Failure to go at the time prescribed to the appointed place of duty, to wit: Night Guard Duty.

Company Grade Article 15, 25 October 2003, for in Uzbekistan, stealing an Xbox of a value of about \$179.99, the property of the Army and Air Force Exchange Service (14 October 2003). The punishment consisted of a reduction to E-2; forfeiture of \$301 (suspended); and extra duty for 14 days.

Field Grade Article 15, 15 December 2003, for in Uzbekistan:

On four occasions, being derelict in the performance of the duties (24, 26, and 29 October 2003, and 13 November 2003);

Willfully disobeying a lawful order from Sergeant (SGT) J. V., noncommissioned officer (NCO), to not use the computer without permission (28 October 2003);

On four occasions, failing to go at the time prescribed to the appointed place of duty (29 and 30 October 2003, and 13 and 18 November 2003);

Making a false official statement, with intent to deceive, to Captain (CPT) A. F. and Master Sergeant R. B. (19 November 2003); and

Willfully disobeying a lawful command from CPT A. F., a superior commissioned officer, only to visit the PX once a week with an E-5 or above present (19 November 2003).

The punishment consisted of a reduction to E-1 (suspended), and forfeiture of \$500 pay (suspended).

Record Of Supplementary Action Under Article 15, UCMJ, 9 January 2004, reflects the suspended portion of the punishment imposed on 15 December 2003, was vacated for: Article 92, Dereliction in the performance of duty on three occasions (5 and 6 January 2004); and Article 86, Failing to go to appointed place of duty (6 January 2004).

Numerous Developmental Counseling Forms, for failing to report to appointed place of duty; disobeying numerous orders from superior officers and NCOs; being derelict in the performance of duties; leaving chapel unsecure; lying to the commander and an NCO, and larceny of non-appropriated funds, receiving funds for a broken Xbox.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(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: DD Form 149; DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal

abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant claims the offenses leading to the discharge were minor. The AMHRR indicates the applicant committed many discrediting offenses. Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends harassment by the applicant's 1SG and other Soldiers with similar offenses were not treated as harshly as the applicant. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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

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? **No.** 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 does not assert that the misconduct was related to a BH condition, however, a review of the records was still conducted to determine if the applicant had a BH condition associated with the misconduct. Records were void of any BH diagnoses or treatment history during or after service, as such no BH medical mitigation is offered

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s):

(1) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention but determined that the applicant's poor judgement as a young man did not outweigh the applicant's failure to report, theft, dereliction of duty, false official statement, and disobeying a lawful order offenses.

(2) The applicant claims the offenses leading to the discharge were minor. The Board considered this contention non-persuasive during its deliberations. The applicant's larceny and multiple incidents involving dereliction of duty in their entirety are not minor.

(3) The applicant contends harassment by the applicant's 1SG and other Soldiers with similar offenses were not treated as harshly as the applicant. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant provided evidence to support the assertion that other Soldiers with failure to report, theft, dereliction of duty, false official statement, and disobeying a lawful order offenses were not treated as harshly as the applicant.

(4) The applicant contends good service, including a combat tour. The Board considered the applicant's three years of service, including a tour in Uzbekistan, but determined that the applicant's record does not outweigh the applicant's misconduct.

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 was not found to hold an in-service behavioral health condition that would potentially mitigate or excuse the applicant's offenses of failure to report, theft, dereliction of duty, false official statement, and disobeying a lawful order. The Board also considered the applicant's contentions regarding unfair treatment and good service but found that the totality of the applicant's 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 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 pretenses, 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:

7/25/2024

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