

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, suffering from pain from an injury the applicant received during a jump on Sicily Drop Zone (DZ) at Fort Bragg. The Department of Veterans Affairs (VA) rated the applicant 40 percent disabled. The applicant was trying to keep quiet about the pain. The VA rated the applicant 50 percent disabled for post-traumatic stress disorder (PTSD). The applicant suffered from PTSD and nightmares since the day the applicant witnessed friends having parachute malfunctions and not surviving the impact. The applicant bottled up the pain and anguish and acted out in anger toward everyone. At this point, the applicant did not care what happened, but now regrets it. The applicant wants to be in the military with fellow Soldiers.

b. **Board Type and Decision:** In a records review conducted on 18 July 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service, and the circumstances surrounding the discharge (the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder (PTSD) with secondary Depressive Disorder Not Otherwise Specified (NOS) related to witnessing fatal jumping accidents. The earliest traumatic incident associated with the applicant's service connected PTSD occurred in December 1999. No misconduct that occurred prior to December 1999 is mitigated due to the PTSD and secondary Depressive Disorder NOS not existing prior to that date and therefore, not contributing to any of the misconduct. Given the nexus between PTSD, avoidance, and difficulty with authority, the applicant's PTSD mitigates any Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999. Finally, lying is not mitigated by PTSD or Depressive Disorder NOS since neither of these conditions interfere with the ability to distinguish between right and wrong act in accordance with the right.) Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

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:** 12 April 2000

c. **Separation Facts:**

(1) Date of Notification of Intent to Separate: 23 March 2000

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant received a Summarized Article 15 for disobeying a noncommissioned officer, and numerous negative counseling statements for lying, failure to report, and disrespect. This type of conduct was not becoming of a Soldier in the Army and negatively affected the morale within the unit.

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

(4) Legal Consultation Date: On 23 March 2000, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 29 March 2000 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 January 1998 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 102

c. Highest Grade Achieved / MOS / Total Service: E-3 / 63B1P, Light Wheeled Vehicle Mechanic / 2 years, 2 months, 21 days

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: Statement of Medical Examination and Duty Status, 15 September 1999, reflects the applicant was treated at Womack Army Medical Center because the applicant injured the right shoulder on a parachute landing fall on or about 14 August 1999 at Fort Bragg. The injury was considered in line of duty.

Statement of Medical Examination and Duty Status, 29 February 2000, reflects the applicant was treated at Womack Army Medical Center because the applicant injured the back on a parachute landing fall on or about 29 February at Fort Bragg. The injury was considered in line of duty.

Summarized Article 15, 17 February 2000, for willfully disobeying First Sergeant (1SG) C., a noncommissioned officer (NCO) (17 February 2000). The punishment consisted of extra duty and restriction for 14 days.

Report of Mental Status Evaluation, 13 March 2000, 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.

Numerous Developmental Counseling Forms, for failing to follow instructions; damaging military equipment; lying to an NCO; failing to report an accident, unauthorized wearing of the battle dress uniform cap; not paying just debt; being informed about adultery; failing to perform cleanup duty; and having an unkept room.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veteran Affairs (VA) Progress Notes, between 4 August 2010 to 5 September 2014, reflecting the VA assessed the applicant with marital discord, and lack of social support, employment, and health issues of family members. The applicant diagnosed with depressive disorder, not otherwise specified (NOS); PTSD with emotional / cognitive dysregulation, anxiety, and sleep disturbance; chronic pain; adjustment disorder with depressed mood; housing, employment, legal, and relationship; and global assessment of functioning score of 55. The VA rated the applicant 40 percent service-connected disabled, with 20 percent related to lumbosacral strain. The applicant reported the VA rated the applicant 50 percent service-connected disability for PTSD.

(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 214; DD Form 293; and VA medical records.

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 PTSD and an injury affected behavior which ultimately led to the discharge, and the VA rated the applicant 40 percent disabled for the injury and 50 percent disabled for PTSD. The applicant provided medical records reflecting the VA rated the applicant 40 percent service-connected disabled, with 20 percent related to lumbosacral strain. The applicant reported the VA rated the applicant 50 percent service-connected disability for PTSD. The applicant was diagnosed with depressive disorder, not otherwise specified (NOS); PTSD with emotional / cognitive dysregulation, anxiety, and sleep disturbance; chronic pain; and adjustment disorder with depressed mood. The AMHRR shows the applicant, while performing parachute landing falls on two occasions, suffered a back and a right shoulder injury. The applicant underwent a mental status evaluation (MSE) on 13 March 2000, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. The MSE was considered by the separation authority.

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: Post Traumatic Stress Disorder, Depressive Disorder Not Otherwise Specified.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is diagnosed and service connected by the VA for PTSD with secondary Depressive Disorder NOS. Service connection establishes that the conditions existed during military service. There is no evidence that the applicant's post-service diagnoses of Anxiety or Adjustment Disorder existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for PTSD with secondary Depressive Disorder NOS related to witnessing fatal jumping accidents. The earliest traumatic incident associated with the applicant's service connected PTSD occurred in December 1999. No misconduct that occurred prior to December 1999 is mitigated due to the PTSD and secondary Depressive Disorder NOS not existing prior to that date and therefore, not contributing to any of the misconduct. Given the nexus between PTSD, avoidance, and difficulty with authority, the applicant's PTSD mitigates any Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999. Finally, lying is not mitigated by PTSD or Depressive Disorder NOS since neither of these conditions interfere with the ability to distinguish between right and wrong act in accordance with the right.

(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 PTSD outweighed the any Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999 basis for separation for the aforementioned reason(s).

b. Response to Contention(s): The applicant contends PTSD and an injury affected behavior which ultimately led to the discharge, and the VA rated the applicant 40 percent disabled for the injury and 50 percent disabled for PTSD. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999 basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's length of service, and the circumstances surrounding the discharge (the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder (PTSD) with secondary Depressive Disorder Not Otherwise Specified (NOS) related to witnessing fatal jumping accidents). The earliest traumatic incident associated with the applicant's service connected PTSD occurred in December 1999. No misconduct that occurred prior to December 1999 is mitigated due to the PTSD and secondary Depressive Disorder NOS not existing prior to that date and therefore, not contributing to any of the misconduct. Given the nexus between PTSD, avoidance, and difficulty with authority, the applicant's PTSD mitigates any Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999. Finally,

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lying is not mitigated by PTSD or Depressive Disorder NOS since neither of these conditions interfere with the ability to distinguish between right and wrong act in accordance with the right.) Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them:

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of Failure to Report (FTR), disrespect, and disobeying orders that occurred after December 1999. Thus, the prior characterization is no longer appropriate.

(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: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

8/12/2024



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