

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, failing to adapt after serving 12 months in Iraq and consequently a pattern of misconduct followed. The applicant was diagnosed with severe PTSD symptoms which the pattern of behavior are in correlation to the symptoms of PTSD.

b. Board Type and Decision: In a records review conducted on 25 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD diagnosis mitigating the FTRs, AWOL, disrespect to a commissioned officer and noncommissioned officer basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. *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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 28 July 2007**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 9 July 2007

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

Failed to go at the time prescribed at the appointed place of duty on diverse occasion;

Remained absent from the unit without proper authority for three days;

Was disrespectful toward a superior commissioned officer; and,

Was disrespectful toward a noncommissioned officer.

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

(4) Legal Consultation Date: 9 July 2007

(5) Administrative Separation Board: NA

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

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 July 2006 / 2 years

b. Age at Enlistment / Education / GT Score: 21 / High School Letter / 111

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources Specialist / 3 years, 11 months, 15 days.

d. Prior Service / Characterizations: RA, 14 August 2003 – 19 July 2006 / HD

e. Overseas Service / Combat Service: Germany, SWA / Iraq (22 April 2004 – 14 February 2005)

f. Awards and Decorations: ARCOM, AAM, MUC, AGCM, NDSM, GWOTSM, ICM, ASR, OSR-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 23 March 2007, on or about 5 March 2007 behave with disrespect toward CPT J. W.; on or about 5 May 2008, did treat with contempt and was disrespectful in language toward SSG F. B.; on or about 4 March 2007, without authority, fail to go at the time prescribed to the appointed place of duty; on or about 8 January 2007, did treat with contempt and was disrespectful in language toward SGT E. B.; and on or about 7 January 2007, without authority, fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-3; extra duty and restriction for 14 days; and no alcohol for 14 days.

Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 10 May 2006; and From AWOL to PDY, effective 12 May 2006.

Military Police Report Number 00548-2006-MPC-847, 11 May 2006, reflects the applicant was being investigated for AWOL – Failed to go to Place of Duty (Article #86, UCMJ) (On Post) and AWOL – Surrendered to Military Authorities (Article #86, UCMJ) (On Post).

Five Developmental Counseling Forms, for failure to report to appointed place of duty x3; failure to report to appointed place of duty in the correct uniform; and initiating of Chapter 14-12b.

i. Lost Time / Mode of Return: AWOL for 2 days, 10 to 12 May 2006. This period is not annotated on the applicant's DD Form 214 block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs letter, 17 July 2014, reflects the applicant was referred to the PTSD Clinical Team for weekly treatments.

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 20 March 2007, 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. The evaluation contains a diagnosis.

Report of Medical Examination, 9 May 2007, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical History, 14 June 2007, the examining medical physician noted the applicant's medical conditions in the comments section.

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 293; Department of Veterans Affairs letter; 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 contends being diagnosed with severe PTSD after serving a tour in Iraq. The pattern of behavior is in correlation to the symptoms of PTSD. The applicant provided Department of Veterans Affairs letter, 17 July 2014, which reflects the applicant was referred to the PTSD Clinical Team for weekly treatments. The AMHRR shows the applicant underwent a Mental Status Evaluation (MSE) on 20 March 2007, which 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. The evaluation contains a diagnosis. A Report of Medical Examination, 9 May 2007, reflects the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Medical History, 14 June 2007, shows the examining medical physician noted the applicant's medical conditions in the comments section. All the medical documents in the AMHRR were 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: PTSD, MDD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent service connected (SC) for 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 a review of the available information reflects that the applicant has BH conditions that mitigate the misconduct as outline in the basis of separation. The applicant is 100 percent SC for PTSD and has additional mitigating diagnosis of MDD. As there is a nexus between PTSD and problems with authority and PTSD and avoidance, the applicant's misconduct characterized by disrespect, FTR, and AWOL, are mitigated by the SC diagnosis.

(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 FTRs, AWOL, disrespect to a commissioned officer and noncommissioned officer basis for separation.

b. Response to Contention(s): The applicant contends being diagnosed with severe PTSD after serving a tour in Iraq. The pattern of behavior is in correlation to the symptoms of 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 fully outweighing the applicant's FTRs, AWOL, disrespect to a commissioned officer and noncommissioned officer basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD diagnosis mitigating the FTRs, AWOL, disrespect to a commissioned officer and noncommissioned officer basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of FTRs, AWOL, disrespect to a commissioned officer and noncommissioned officer. 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.

(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

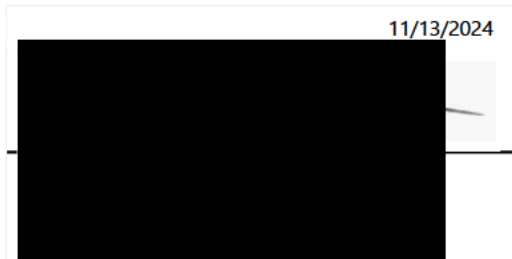
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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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, paragraph 14-12a

Authenticating Official:



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