

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was inequitable because it was based upon one set of circumstances in an honorable period of service including combat. In the applicant's first three years they received a Good Conduct Medal, deployed successfully to Afghanistan, and was diagnosed with post-traumatic stress disorder (PTSD). During this time, the applicant's spouse, a fellow Soldier, experienced threats, and sexual harassment throughout this period. The applicant's spouse thought the unit was not looking out for them. The applicant stayed at home rather than going to work as a precaution. The applicant claims the day before going AWOL, they had suicidal thoughts, along with depression and anxiety; was not in a good mental state and made poor choices.

b. Board Type and Decision: In a records review conducted on 14 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Depression, Other Specified Trauma, and Stressor-Related Disorder outweighing the applicant's AWOL offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

*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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 16 November 2012**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 3 October 2012, the applicant was charged with:

Charge I: Violating Article 85, UCMJ, for being in desertion from, Specification: on or about 3 October 2012, without authority and with intent to stay there permanently, absent from their unit.

Charge II: Violating Article 85, UCMJ, for being in desertion from, Specification: on or about 5 September 2012, without authority and with intent to stay there permanently, absent from their unit and did remain so absent until on or about 18 September 2012.

Charge III: Violating Article 86, UCMJ, for being AWOL, Specification: on or about 6 June 2012, without authority, absent oneself from their unit and did remain so absent until on or about 26 June 2012.

Charge IV: Violating Article 86, UCMJ, for being AWOL, Specification: on or about 9 July 2012, without authority, absent oneself from their unit and did remain so absent until on or about 10 July 2012.

Charge V: Violating Article 86, UCMJ, for being AWOL, Specification: on or about 4 September 2012, without authority, absent oneself from their unit and did remain so absent until on or about.

(2) Legal Consultation Date: NIF

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: undated / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 October 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 96

c. Highest Grade Achieved / MOS / Total Service: E-4 / 15 F10, ACFT Electrician / 3 years, 11 months, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (6 February 2011 – 31 January 2012)

f. Awards and Decorations: AM, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

Military Police Report, 18 September 2012, reflects the applicant was apprehended for: Desertion; AWOL failed to go to place of duty; AWOL surrendered to military authorities (on post); Desertion apprehended by civilian authorities (off post).

Law Enforcement Report-Initial-Final/Referred, 28 September 2016, reflects the investigation revealed on 26 June 2012, B/563rd ASB submitted a personal action form the Fort Campbell

Military Police which indicated on 26 June 2012, the applicant's duty status changed from absent without leave to present for duty.

Thirteen Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 5 June 2012;
From AWOL to PDY, effective 26 June 2012;
From PDY to AWOL, effective 9 July 2012;
From AWOL to Hospitalized (HOS), effective 10 July 2012;
From HOS to PDY, effective 26 July 2012;
From PDY to AWOL, effective 4 September 2012;
From AWOL to Dropped From Rolls (DFR), effective 5 September 2012;
From DFR to PDY, effective 18 September 2012;
From PDY to AWOL, effective 2 October 2012;
From AWOL to DFR, effective 3 October 2012;
From DFR to PDY, effective 4 October 2012;
From HOS to Confined by Civil Authorities (CCA), effective 15 October 2012; and
From CCA to PDY, effective 31 October 2012.

Developmental Counseling Forms, for repayment of debt.

i. Lost Time / Mode of Return: 54 days:

AWOL, 5 June 2012 – 26 June 2012 / NIF

AWOL, 9 July 2012 – 10 July 2012 / NIF

AWOL, 4 September 2012 – 18 September 2012 / Apprehended by Civil Authorities

AWOL, 2 October 2012 – 4 October 2012 / NIF

AWOL, 15 October 2012 – 31 October 2012 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Cumberland Hall Hospital Discharge Summary, 15 October 2012, the evaluation included a medical diagnosis.

Adena Regional Medical Center, 3 September 2021, the evaluation included a medical diagnosis.

(2) AMHRR Listed: Report of Mental Status Evaluation, 23 July 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The evaluation included a 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: Three DD Forms 214; two DD Forms 293; letter of support; medical records; self-authored letter; Honorable M.C., request for information; ARBA response to the Honorable M.C; ARBA letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health from the Adena Regional Medical Center.

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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends suffering from PTSD. The applicant provided a Cumberland Hall Hospital Discharge Summary, 15 October 2012, reflecting the evaluation included a medical diagnosis and an Adena Regional Medical Center record, 3 September 2021, the evaluation included a medical diagnosis. The AMHRR includes a Report of Mental Status Evaluation, 23 July 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The evaluation included a diagnosis. The mental status evaluation was considered by the separation authority.

The applicant contends their spouse, a fellow Soldier, experienced threats, and sexual harassment. The applicant's spouse thought the unit was not looking out for them, so the applicant stayed at home rather than going to work as a precaution. 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 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. The applicant provided a third-party letter which states the applicant set the standard for Soldiers and was highly disciplined, physically fit and intellectually superior in their team. The applicant was wrongfully punished and treated very poorly by their superiors and the chain of command.

The applicant contends seeking treatment for their mental health from the Adena Regional Medical Center. 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 reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, Other Specified Trauma- and Stressor-Related Disorder. Additionally, the applicant asserts Anxiety and PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder and Depression and is service connected by the VA for Other Specified Trauma- and Stressor-Related Disorder. The applicant also self-asserts Anxiety and PTSD during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. There is a nexus between Depression, Other Specified Trauma- and Stressor-Related Disorder, and avoidance. The medical record reveals that the applicant was experiencing some delusional thought process around the time of the AWOLs. The evidence strongly suggests that the applicant's BH conditions contributed to the AWOLs that led to the separation. Accordingly, the AWOLs are mitigated. The applicant's self-asserted Anxiety and PTSD are subsumed under the service-connected Other Specified Trauma- and Stressor-Related Disorder.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Depression, Other Specified Trauma, and Stressor-Related Disorder outweighed the separating AWOL offenses.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention and found it valid. The applicant's Depression, Other Specified Trauma, and Stressor-Related Disorder outweighed the separating AWOL offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the medical mitigation of the separating AWOL offenses.

(3) The applicant contends their spouse, a fellow Soldier, experienced threats, and sexual harassment. The applicant's spouse thought the unit was not looking out for them, so the applicant stayed at home rather than going to work as a precaution. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the medical mitigation of the separating AWOL offenses.

(4) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the medical mitigation of the separating AWOL offenses.

(5) The applicant contends seeking treatment for their mental health from the Adena Regional Medical Center. The Board noted the treatment efforts and determined this contention did not warrant additional upgrades.

c. The Board determined the discharge is inequitable based on the applicant's Depression, Other Specified Trauma, and Stressor-Related Disorder outweighing the separating AWOL offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Depression, Other Specified Trauma, and Stressor-Related Disorder outweighed the separating AWOL offenses. 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 the service connected BH conditions. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001031

- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

11/19/2024



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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs