

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, the discharge is hindering the applicant from going to school and furthering their education. The applicant was under much stress in a new job. The applicant's supervisor was disrespecting the applicant in front of other Soldiers. The applicant asked to have a meeting in the office and when they were in the office, the supervisor was being disrespectful to the applicant and wanted the applicant to stand at parade rest; however, the applicant casually stood there. The supervisor began to yell at the applicant and eventually the applicant could not take it anymore and lost their temper and raised their voice. The applicant had no other issues with insubordination prior to this and had always had the utmost respect for the superiors.

b. **Board Type and Decision:** In a records review conducted on 6 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating disobeying an order, disrespect and FTRs. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15. Accordingly, the narrative reason for separation changed to Secretarial Authority with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the applicant's BH condition 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:** 7 August 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 19 June 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 1 May 2014, the applicant willfully disobeyed SFC J. J. On or about 1 May 2014, the applicant was disrespectful in language and deportment toward SFC J. J. Between on or about 22 February 2013 and on or about 15 May 2013 on divers occasions, the applicant failed to report to the appointed place of duty.

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

(4) **Legal Consultation Date:** 9 June 2014 and 17 July 2014

(5) **Administrative Separation Board:** On 19 June 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable discharge.

On 17 July 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) **Separation Decision Date / Characterization:** 22 July 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 March 2012 / The applicant's DD Form 4 for this period is void from the AMHRR; however, according to the DD Form 214 the applicant reenlisted on 1 March 2012.

b. **Age at Enlistment / Education / GT Score:** 28 / High School Letter / 89

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 42A20, Human Resources Specialist / 12 years, 10 months, 23 days

d. **Prior Service / Characterizations:** USAR, 15 September 2001 – 1 July 2008 / HD
(Concurrent Service)
AD, 10 February 2003 – 22 May 2004 / HD
RA, 2 July 2008 – 10 June 2010 / HD
RA, 11 June 2010 – 29 February 2012 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (6 January 2009 – 14 April 2009); Kuwait (22 April 2003 – 17 April 2004)

f. **Awards and Decorations:** AAM, AGCM, NDSM, GWOTEM, ICM-CS, NCOPDR-2, ASR, AFRM

g. **Performance Ratings:** 7 October 2011 – 31 May 2012 / Fully Capable
1 June 2012 – 10 October 2012 / Among the Best
10 October 2012 – 31 May 2013 / Marginal
1 June 2013 – 31 May 2014 / Marginal

h. **Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 23 March 2010, on or about 13 February 2010, without authority, fail to go at the time prescribed to the appointed place of duty; and on or about 13 February 2010, disobeying a lawful order from 1SG D. R. P. The punishment consisted of forfeiture of \$268 pay for one month; extra duty for 14 days; and oral reprimand.

FG Article 15, 1 June 2014, on or about 1 May 2014, willfully disobey a lawful order from SFC J. J.; on or about 1 May 2014, was disrespectful in language and deportment toward SFC J. J. The punishment consisted of a reduction to E-4; forfeiture of \$1,213 pay per month for two months (suspended); and extra duty for 45 days.

Several Developmental Counseling Forms, for various acts of misconduct.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Report of Mental Status Evaluation (MSE), 7 May 2014, 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 applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant's BH history was unremarkable. The form does not contain a diagnosis.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4j(1).

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; DD Form 214; four certificates; Orders 05-197-00001; separation packet.

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.

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 being under much stress in a new job and the supervisor was disrespecting the applicant in front of other Soldiers. The applicant asked to have a meeting with the supervisor and was asked to stand at parade rest; however, the applicant stood there casually. The supervisor began to yell at the applicant and the applicant could not take it anymore and raised their voice back. 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's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, PTSD, and MST.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD related to MST and combat. Service connection establishes that the applicant's PTSD and MST existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between PTSD, MST, difficulty with authority, and avoidance, the applicant's BH conditions mitigate the misconduct that served as the basis of separation (BOS).

(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 PTSD and MST outweighed the BOS misconduct.

b. Response to Contention(s):

(1) The applicant contends being under much stress in a new job and the supervisor was disrespecting the applicant in front of other Soldiers. The applicant asked to have a meeting with the supervisor and was asked to stand at parade rest; however, the applicant stood there casually. The supervisor began to yell at the applicant and the applicant could not take it anymore and raised their voice back. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD and MST outweighing the applicant's disobeyed an order, disrespect and FTRs BOS.

(2) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating the BOS misconduct. Therefore, the Board voted to grant relief in the form of an

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upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15. Accordingly, the narrative reason for separation changed to Secretarial Authority with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH condition warranting consideration prior to reentry of military service. The applicant may request a personal appearance hearing to address further issues before a 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 and MST mitigated the BOS misconduct. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

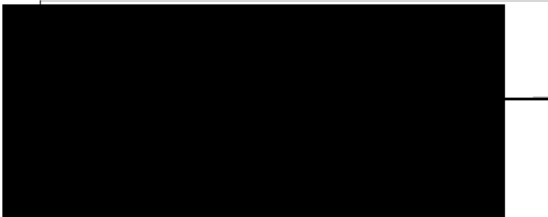
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200, Chapter 15

Authenticating Official:

9/4/2024



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