

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

The applicant seeks relief contending, in effect, the discharge was based on an isolated incidence in over five months, despite never receiving any disciplinary action in seven years of service and three deployments. The applicant was an outstanding leader who served the country honorably until the events leading to the separation. The applicant, who had returned from a deployment and had been separated from the pregnant spouse, who was forced to remain at Fort Carson while the applicant was reassigned to Fort Stewart. The applicant suffered from depression because of the deployment and being separated from the spouse, among other concerns. Despite being told to seek treatment, Soldiers were also advised not to appear weak. As a leader, the applicant consistently prioritized the needs of the Soldiers before oneself and set an exceptional example. The applicant never went on sick call, never had a profile, or visited mental health as required. The applicant now understands there was no excuse for the behavior. The applicant believes in having demonstrated to the society and family of being reputable, dependable, and a hardworking spouse, parent, and member of the society. The applicant has learned from the mistakes, which affects daily life. The discharge haunts the applicant and is applicant, having served in the military for seven years, knows no other career. The applicant is unable to obtain an employment, or the VA benefits earned while serving overseas. An upgrade would relieve the stress and allow the applicant to be proud rather than being embarrassed when presenting the DD Form 214 to a potential employer, VFW, or family. The applicant is ready to move on with life. The applicant dedicated seven years of the life, heart, and soul into the Army and its Soldiers, including three consecutive deployments. Aside from the mistake, the applicant received no negative counseling statement or an unfavorable action; therefore, an under other than honorable conditions is not an accurate description of the service. The appropriate reflection of seven years of service is the applicant's accomplishments through blood, sweat, and tears, rather than the mistakes made in four months period.

b. **Board Type and Decision:** In a records review conducted on 18 April 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

- b. **Date of Discharge:** 28 August 2012

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 16 July 2012, the following charges were preferred against the applicant:

Charge I: Violation of Article 92, UCMJ, for disobeying the lawful orders issued by CPT R. F., to wit: to have no contact with SPC T. F., on:

Specification 1: 29 May 2012, by wrongfully calling and visiting the residence of SPC T. F.

Specification 2: 30 May 2012, by wrongfully sending text messages to SPC T. F.

Charge II: Violation of Article 128, UCMJ, for assaulting SPC T. F. on 29 May 2012.

Charge III: Violation of Article 134, UCMJ, for wrongfully communicating a threat to SPC T. F. on 29 May 2012.

(2) Legal Consultation Date: 23 July 2012

(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: 8 August 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 January 2011 / 4 years

b. Age at Enlistment / Education / GT Score: 28 / some college / 112

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92F20, Petroleum Supply Specialist / 7 years, 7 months, 8 days

d. Prior Service / Characterizations: RA, 21 January 2005 – 4 August 2006 / HD
RA, 5 August 2006 – 21 January 2011 / HD

e. Overseas Service / Combat Service: SWA / Iraq (11 December 2005 – 29 November 2006; 9 March 2008 – 14 March 2009); Afghanistan (23 July 2010 – 2 July 2011)

f. Awards and Decorations: ARCOM-3, AAM, NATOMDL, VUA, AGCM-2, NDSM, ACM-2CS, GWOTSM, ICM-CS-2, ASR, OSR-3

g. Performance Ratings: 1 October 2010 – 30 September 2011 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 24 April 2012, reflects the applicant tested positive for COC > LOL (cocaine) and THC 209 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 11 April 2012.

Developmental Counseling Form for wrongful use of a controlled substance and testing positive for THC on a urinalysis.

CID Report of Investigation - Initial Final, 10 May 2012, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Possession of Cocaine, Wrongful possession of Marijuana, Wrongful use of Marijuana and Wrongful use of Cocaine.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 30 May 2012 and was found guilty of two of the three charges described as summary of offenses, pleas, and findings:

Charge I: Violation of Article 92, UCMJ, not guilty consistent with the plea.

Charge II: Four Specifications of Violation of Article 112a, UCMJ, guilty consistent with the pleas:

Between 11 March and 11 April 2012, wrongful use of marijuana;

Between 9 and 11 April 2012, wrongful use of cocaine;

Between 11 March and 11 April 2012, wrongful possession of 30 grams of marijuana; and,

Between 11 March and 11 April 2012, wrongful possession of 30 grams of cocaine.

Charge III: Violation of Article 134, UCMJ, guilty consistent with the plea, between 1 December 2011 and 13 April 2012, having wrongful sexual intercourse with T. L. F., a person not the spouse.

Sentence: Reduction to E-4, forfeiture of \$1,575 pay, and restriction.

Military Police Report, 31 May 2012, reflects the applicant was apprehended for: simple assault, consummated by a battery; child endangerment; damage to private property; and damage to government property (on post).

Charge sheet as described in previous paragraph 3c.

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

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

(1) **Applicant provided:** Department of Veterans Affairs entitlement to VA benefits decision, 18 November 2015, reflecting the applicant was rated 70 percent disabled for PTSD.

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 24 May 2012, reflects the applicant was cleared for administrative separation. 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 with negative results. The evaluation commented the applicant was exhibiting signs of depression and was encouraged to return for counseling but had refused the resource. The evaluation included a diagnosis of 309.24, Adjustment Disorder with disturbance of mood.

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 and DD Form 214. Additional Evidence: Two VA letters; Secretary of Defense memorandum; three NCOERs; degree plan; DA Form 1059; three VA Forms 21-4138; and third-party statement.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.)

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 evidence in the applicant's 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 event leading to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends good service, being an outstanding leader who prioritized the needs of the Soldiers over oneself and setting exceptional examples, including three consecutive combat tours.

The applicant contends suffering depression from being deployed and separated from the spouse. The applicant provided a Department of Veterans Affairs Disability benefits rating decision reflecting the applicant was rated 70 percent disabled for PTSD. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 24 May 2012, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE indicates an Adjustment Disorder with disturbance of mood.

The applicant contends being unable to obtain an employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends being unable to obtain some benefits. Eligibility for veterans' benefits 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.

The third-party statements provided with the application describe the applicant as an outstanding leader, who helped and placed the peers and subordinates above oneself, who was mentally drained from the countless missions in Afghanistan, and who was never the same person after returning from an IED event and a recovery mission, the applicant no longer had the motivation and compassion.

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: Adjustment Disorder, PTSD. Additionally, the applicant asserts Depression, 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'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. Service connection establishes that the applicant's PTSD existed during military service. The applicant also self-asserts Depression at the time of military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD. The applicant also self-asserts Depression. However, there is no natural sequela between an Adjustment Disorder, PTSD, or Depression and disobeying a no contact order by sending text messages, calling, and visiting the residence of the individual who the applicant was ordered not to have contact with or communicating a threat and assaulting the individual since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. On the contrary, the misconduct involved a specific person and reflects choice and motivation, particularly since the applicant cited that the misconduct was in reaction to blaming the individual for the applicant's summary court martial.

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

b. Response to Contention(s):

(1) The applicant contends the event leading to the discharge from the Army was an isolated incident. The Board considered this contention and determined the applicant's claim of an isolated incident does not excuse or outweigh the applicant's basis for separation. The applicant was discharged for disobeying a lawful no contact order by calling, texting, and visiting the residence, committing assault, and communicating a threat. The discharge is proper and equitable, an upgrade is not warranted.

(2) The applicant contends good service, being an outstanding leader who prioritized the needs of the Soldiers over oneself and setting exceptional examples, including three consecutive combat tours. The Board considered this contention and determined it does not excuse or outweigh the applicant's basis for separation. The applicant was discharged for disobeying a lawful no contact order by calling, texting, and visiting the residence, committing

assault, and communicating a threat. The discharge is proper and equitable, an upgrade is not warranted.

(3) The applicant contends suffering depression from being deployed and separated from the spouse. The Board considered the applicant's 7 years of service, including 3 combat tours in Iraq and Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's disobeying a lawful no contact order by calling, texting, and visiting the residence, committing assault, and communicating a threat.

(4) The applicant contends being unable to obtain an employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(5) The applicant contends being unable to obtain some benefits. 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 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 Adjustment Disorder, PTSD, and asserted Depression did not excuse or mitigate disobeying a lawful no contact order by calling, texting, and visiting the residence, committing assault, and communicating a threat offense. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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 pretexts, and 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:

7/5/2024

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