

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

The applicant seeks relief contending, in effect, before the incident which resulted in the discharge, the applicant was being processed for a medical retirement. The applicant suffers from PTSD and deteriorating mental and physical health. The applicant requires assistance and attention from the VA, who understands. The applicant has accidentally injured family members because of flashbacks and being injured makes it tough to work and support the family. The applicant has been receiving medications from the ER, which have proven too expensive for the family. The applicant served honorably for two periods of enlistment and an overseas service. The applicant needs help to avoid causing harm to others. The applicant wants to return to school and become a counselor.

b. **Board Type and Decision:** In a records review conducted on 2 May 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:** 2 April 2014

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 18 December 2013, the following Charges were preferred against the applicant and referred for trial to a Special Court-Martial on 17 January 2014:

Charge I: Violation of the UCMJ, Article 107, for making a false official statement to Detective A. B. on 12 September 2013.

Charge II, Violation of the UCMJ, Article 121, for three Specifications of larceny:

Specification 1: on 6 September 2013, steal \$100 cash, property of Armed Forces Bank.

Specification 2: on 6 September 2013, steal \$100 cash, property of Armed Forces Bank.

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AR20210001143

Specification 3: on 16 April 2013, steal a wedding gown of a value of \$1,417.85, property of David's Bridal.

Charge III: Violation of the UCMJ, Article 123a, for wrongfully and unlawfully deliver to S. C., a certain check in words and figures of \$550, on 29 June 2013, then knowing it did or would not have sufficient funds upon its presentment to Bank of America.

Charge IV: Violation of the UCMJ, Article 134, three Specifications of failing to pay with sufficient funds and one Specification of obtaining and using personal identifying information:

Specification 1: on 6 September 2013, make and utter certain check in words and figures of \$100 with insufficient funds.

Specification 2: on 6 September 2013, make and utter certain check in words and figures of \$100 with insufficient funds.

Specification 3: on 29 June 2013, make and utter certain check in words and figures of \$550 with insufficient funds to S. C.

Specification 4: on 16 April 2013, obtained and used personal identifying information without the consent of SGT P. F. to obtain credit at David's Bridal.

(2) Legal Consultation Date: 25 February 2014

(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: 28 February 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 February 2010 / 5 years

b. Age at Enlistment / Education / GT Score: 23 / GED / 106

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20, Infantryman / 5 years, 7 months, 12 days

d. Prior Service / Characterizations: RA, 21 August 2008 – 17 February 2010 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (30 January 2010 – 30 January 2011)

f. Awards and Decorations: ACM-CS, ARCOM, AAM, JMUA, MUC, AGCM, NDSM, GWOTSM, NCOPDR, ASR, OSR, NATOMDL

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 27 February 2013, for behaving with disrespect toward 1LT J. R. B., a superior commissioned officer on 19 December

2012. The punishment consisted of a reduction to E-4; forfeiture of \$1,152 pay (suspended); and extra duty and restriction for 45 days (suspended).

FG Article 15, 5 March 2013, for wrongfully advising SPC D. W. to violate Article 107 (false official statement) on 13 December 2012. The punishment consisted of a reduction to E-4; forfeiture of \$1,201 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Military Police Report, 8 September 2013, reflects the applicant was apprehended for: Identity Theft (Off Post).

Charge sheet as described in previous paragraph 3c.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Memorandum, 21 February 2014, subject: Sanity Board (Narrative Summary), rendered by a clinical psychologist and assisted by a forensic psychiatrist, reflects clinical psychiatric diagnoses as: Axis I: PTSD and Bipolar disorder per the treating and iDES providers, and Alcohol Dependence, with binge-drinking behaviors, and Axis II: Prominent cluster "B" elements (antisocial and narcissistic).

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(2).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; and two third-party statements.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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, 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.)

f. 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.

g. 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 reenry 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 AMHRR confirms the applicant was charged with the commission of offenses 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 offenses, or lesser included offenses, 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 being processed for a medical retirement before the incident which led to the discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record.

The applicant contends suffering from PTSD and mental and physical issues which were worsening. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR shows the applicant underwent a court ordered Sanity Board examination, which reflects on diagnoses of PTSD and Bipolar disorder. The examination indicates the applicant was able to fully appreciate the nature and quality and wrongfulness of the conduct and had sufficient mental capacity to understand the nature of the court-martial proceedings, and to conduct or cooperate intelligently in the defense. The Sanity Board report was considered by the separation authority. The ARBA sent a letter to the applicant at the address in the application on 2 August 2021 requesting documentation to support a PTSD diagnosis but received no response from the applicant.

The applicant desires to return to school and obtain assistance and care from the VA. Eligibility for veterans' 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.

The applicant contends serving honorably and serving overseas. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The third-party statements provided with the application reflect the applicant as having a great moral character and the performance as having genuine concern for the wellbeing of the Soldiers and taught younger Soldiers the correct way of doing things.

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, TBI, Bipolar Disorder, Depression, and Anxiety.

(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, PTSD, TBI, Bipolar Disorder, Depression, and Anxiety, and the VA has service connected the PTSD and TBI.

(3) Does the condition or experience 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, PTSD, TBI, Bipolar Disorder, Depression, and Anxiety, and the VA has service connected the PTSD and TBI. However, none of these conditions mitigate making a false official statement, larceny, writing checks with insufficient funds, or using someone else's identifying information without consent to obtain credit since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's misconduct was conscious and purposeful with financial motive. There is no evidence that any of the applicant's BH conditions were contributory, which was supported at the time by a psychiatric evaluation for a Sanity Board hearing and by in-service treatment records.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, TBI, Bipolar Disorder, Depression, and Anxiety outweighed the applicant's medically unmitigated offenses of making a false official statement, larceny, writing checks with insufficient funds, or using someone else's identifying information without consent.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD and mental and physical issues which were worsening. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, TBI, Bipolar Disorder, Depression, and Anxiety outweighed the applicant's medically unmitigated offenses of making a false official statement, larceny, writing checks with insufficient funds, or using someone else's identifying information without consent.

(2) The applicant contends being processed for a medical retirement before the incident which led to the discharge. The Board determined that the applicant's contention concerning medical retirement does not fall within the purview of the ADRB. The applicant (or designated representative) may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(3) The applicant desires to return to school and obtain assistance and care from the VA. The Board considered this contention and determined that eligibility for Veteran's benefits 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.

(4) The applicant contends serving honorably and serving overseas. The Board considered the totality of the applicant's record, including length of service and a combat tour in Afghanistan, and found that the applicant's record does not outweigh the medically unmitigated

offenses of making a false official statement, larceny, writing checks with insufficient funds, or using someone else's identifying information without consent.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address 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 not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Adjustment Disorder, PTSD, TBI, Bipolar Disorder, Depression, and Anxiety did not outweigh the applicant's medically unmitigated offenses of making a false official statement, larceny, writing checks with insufficient funds, or using someone else's identifying information without consent. The Board also considered the applicant's contention regarding good service and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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/meritorious service warranting a General or Honorable discharge characterization.

(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:

5/21/2024

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