

**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, not being evaluated or referred to mental health services, prior to separation. At the time of separation, the applicant was under duress, resulting from an abusive relationship with another Soldier, at the same installation. Fearing for their safety, the applicant went AWOL. The applicant realizes it was wrong to go AWOL; however, the applicant did not believe the chain of command could ensure their safety. The applicant feared further abuse, and the potential for bodily harm, from the other Soldier. Since being discharged from the Army, the applicant has been diagnosed with epilepsy, severe depression disorder, PTSD, anxiety, degenerative disk disorder both cervical and lumbar, Achilles Tendinitis and hearing loss to the left ear. The applicant worked from 2000 to 2003, until they were permanently taken out of work and permanently put on social security disability; the applicant continues to pursue a degree in Health Administration.

b. **Board Type and Decision:** In a records review conducted on 18 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD relate to MST outweighed the applicant's AWOL basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable, changed the separation authority to AR 635-200, Chapter 15. Accordingly, the narrative reason for separation was 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. *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-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 August 2000

**c. Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 22 September 1999, the applicant was charged with: The Charge: Violating Article 86, UCMJ. The Specification: On or about 19 June 1999, without authority, absent oneself from the organization and did remain so absent until on or about 10 September 1999.

(2) **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.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Separation Decision Date / Characterization:** 3 March 2000 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 14 April 1998 / 4 years

b. **Age at Enlistment / Education / GT Score:** 23 / GED / 104

c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 92A10, Automated Logistical Specialist / 2 years, 1 month, 4 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** ASR

g. **Performance Ratings:** None

h. **Disciplinary Action(s) / Evidentiary Record:** Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 19 June 1999; and From AWOL to Dropped From Rolls (DFR), effective 19 July 1999.

Report of Return of Absentee, 10 September 1999, reflects the applicant was apprehended by civil authorities and returned to military control on 10 September 1999.

Charge Sheet as described in previous paragraph 3c(1).

i. **Lost Time / Mode of Return:** 82 days (AWOL, 19 June 1999 – 9 September 1999) / Apprehended by Civil Authorities

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

(1) **Applicant provided:** Clinical Alternatives, P.C., Comprehensive Assessment Outpatient Report, 13 October 2014, reflects the applicant was referred for an assessment by the Wounded Warrior Program. The assessment reflects a diagnosis.

(2) **AMHRR Listed:** None

*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; self-authored statement; DD Form 214; two third-party letters; Clinical Alternatives, P.C. Comprehensive Assessment Report.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant continues to pursue a degree in Health Administration.

**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 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.

**(5)** 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.)

**(6)** 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 "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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends not being evaluated or referred to mental health services prior to separation. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being under duress from an abusive relationship with another Soldier and fearing for their safety and went AWOL. The applicant feared further abuse and the potential for bodily harm. The applicant did not believe the chain of command could ensure their safety. 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 since being discharged from the Army being diagnosed with epilepsy, severe depression disorder, PTSD, anxiety, degenerative disk disorder both cervical and lumbar, Achilles Tendinitis and hearing loss to the left ear. The applicant provided Clinical Alternatives, P.C., Comprehensive Assessment Outpatient Report, 13 October 2014, which reflects the applicant was referred for an assessment by the Wounded Warrior Program. The assessment reflects a diagnosis. The AMHRR does not contain a mental status evaluation (MSE).

The third-party statements provided with the application reflect the applicant's good character. One statement is from the Pastor which states the applicant is the sole supporter of three children, two of which have a disability and speaks of the applicant's patience and endurance. The other statement is from the applicant's Region IV Coordinator of the Virginia Wounded Warrior Program, and it speaks of the applicant's extensive history of trauma and instability.

The applicant continues to pursue a degree in Health Administration. 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's Medical Advisor, a voting member, reviewed the applicant's DOD

and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, MST, IPV. Additionally, the applicant asserts Major Depression and Anxiety, 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 is service connected by the VA for PTSD related to MST, and there is evidence that the applicant experienced IPV in a relationship with a fellow soldier during military service. Service connection establishes that the applicant's PTSD and MST existed during military service. The applicant has been diagnosed post-service with Major Depressive Disorder and Generalized Anxiety, but there is no evidence that these conditions existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is service connected by the VA for PTSD related to MST, and there is evidence that the applicant experienced IPV in a relationship with a fellow soldier during military service. Given the nexus between PTSD, MST, IPV, and avoidance, the applicant's PTSD, MST, and IPV mitigate the AWOL that led to the separation.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD related to MST outweighed the AWOL basis for separation.

**b. Response to Contention(s):**

(1) The applicant contends not being evaluated or referred to mental health services prior to separation. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD related to MST fully outweighing the applicant's AWOL basis for separation.

(2) The applicant contends being under duress from an abusive relationship with another Soldier and fearing for their safety and went AWOL. The applicant feared further abuse and the potential for bodily harm. The applicant did not believe the chain of command could ensure their safety. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD related to MST fully outweighing the applicant's AWOL basis for separation.

(3) The applicant contends since being discharged from the Army being diagnosed with epilepsy, severe depression disorder, PTSD, anxiety, degenerative disk disorder both cervical and lumbar, Achilles Tendinitis and hearing loss to the left ear. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD related to MST fully outweighing the applicant's AWOL basis for separation.

(4) The applicant continues to pursue a degree in Health Administration. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD related to MST fully outweighing the applicant's AWOL basis for separation.

**c.** The Board determined the discharge is inequitable based on the applicant's PTSD related to MST outweighed the applicant's AWOL basis for separation. Therefore, the Board voted to

grant relief in the form of an upgrade of the characterization of service to honorable, changed the separation authority to AR 635-200, Chapter 15. Accordingly, the narrative reason for separation was 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. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD related to MST mitigated the applicant's misconduct of AWOL. 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.

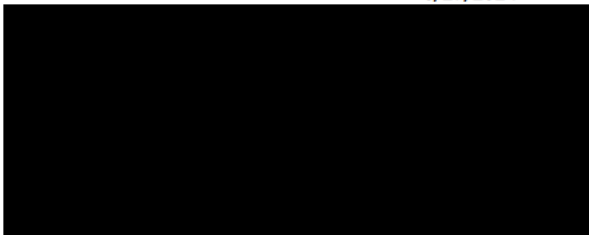
(3) The RE code will not change, due to applicant's BH conditions warranting consideration prior to reentry of military service.

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:

6/27/2024



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