

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, suffering from a behavioral disability, specifically, attention deficit hyperactive disorder, and was not receiving proper medical and psychological treatment at the time of discharge. The severity of this disorder caused flaws in the applicant's thinking and perception and was detrimental to the applicant's ability to function well in the unit and remain disciplined enough to maintain good conduct and earn an honorable discharge upon completion of service. The applicant has been diagnosed by LaSalle University Community Psychological Services with ADHD.

b. **Board Type and Decision:** In a records review conducted on 4 April 2024, and by a 3-2 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 16 January 2009

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 October 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant absented oneself from C Troop, 4th Squadron, 73rd Cavalry Regiment, 4th Brigade Combat Team, between on or about 15 and 28 November 2007 and between on or about 15 July and 19 August 2008.

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

(4) **Legal Consultation Date:** 24 October 2008

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 17 November 2008 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 10 August 2006 / 6 years, 20 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / GED / 111
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B1P, Infantryman / 2 years, 3 months, 20 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (13 January 2007 – 9 April 2008)
- f. **Awards and Decorations:** ARCOM, NDSM, ACM, GWOTSM, ASR, OSR, NATOMDL
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Four Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 15 November 2007;

From AWOL to PDY, effective 28 November 2007;

From PDY to AWOL, effective 15 July 2008; and;

From AWOL to PDY, effective 19 August 2008.

FG Article 15, 24 December 2007, with intent to avoid hazardous duty, quit the unit of attachment on or about 15 November 2007, and did so remain absent until on or about 28 November 2007. The punishment consisted of a reduction to E-1; forfeiture of \$700 pay per month for two months; and extra duty and restriction for 45 days.

FG Article 15, 11 September 2008, for without authority absent oneself from the unit on or about 15 July 2008 and did remain so absent until on or about 19 August 2008. The punishment consisted of a reduction to E-1; forfeiture of \$673 pay per month for two months; and extra duty and restriction for 45 days.

Developmental Counseling Form, for being recommended for an Article 15 under articles 85, 86, and 92.

- i. **Lost Time / Mode of Return:** 46 days:

AWOL, 15 November 2007 – 27 November 2007 / NIF

AWOL, 15 July 2008 – 18 August 2008 / NIF

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

(1) **Applicant provided:** LaSalle University Evaluation and Assessment Program Report, 25 January 2012, reflects a diagnosis.

Pennsylvania Department of Public Welfare Health-Sustaining Medication Assessment Form; 19 November 2014, reflects a diagnosis.

**(2) AMHRR Listed:** Report of Medical History, 29 September 2008, the examining medical physician noted the applicant's medical conditions in the comments section.

*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:** Online application; self-authored statement; DD Form 214; Community Psychological Service letter; LaSalle University Evaluation and Assessment Program Report; Pennsylvania Department of Public Welfare Health-Sustaining Medication Assessment Form.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has graduated from a private University (University of the Sciences) with a Bachelor of Science in Exercise Science, establishing a professional career working as a Personal Trainer at the YMCA and Golds Gym, and serving a team of players as Captain of the University of the Sciences Soccer Team.

**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.

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 the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends at the time of discharge suffering from an untreated psychological disorder which was later diagnosed as ADHD. The disorder caused flaws in the applicant's thinking. The applicant has been diagnosed by LaSalle University Community Psychological Services. The applicant provided LaSalle University Evaluation and Assessment Program Report, 25 January 2012, the report reflects a diagnosis. A Pennsylvania Department of Public Welfare Health-Sustaining Medication Assessment Form; 19 November 2014, also reflects a diagnosis. The AMHRR shows a Report of Medical History, 29 September 2008, wherein the examining medical physician noted the applicant's medical conditions in the comments section. The Report of Medical History was considered by the separation authority.

The applicant contends an upgrade of the discharge will allow the applicant to become a Police Officer for the Delaware State Police and serve the country again. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant has graduated from a private University (University of the Sciences) with a Bachelor of Science in Exercise Science, establishing a professional career working as a

Personal trainer at the YMCA and Golds Gym, and serving a team of players as Captain of the University of the Sciences Soccer Team. 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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge. The applicant asserted ADHD, but this is not a behavioral health condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s):

(1) The applicant contends suffering from an untreated psychological disorder at the time of discharge, which was later diagnosed as ADHD. The Board liberally considered this contention but determined, based on the Board Medical Advisor's opine, that the applicant's asserted ADHD is not a potentially mitigating behavioral health condition.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but found insufficient evidence of mitigating factors to outweigh the applicant's Pattern of Misconduct narrative reason for separation.

(3) The applicant contends an upgrade of the discharge will allow the applicant to become a Police Officer for the Delaware State Police and serve the country again. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(4) The applicant has graduated from a private University (University of the Sciences) with a Bachelor of Science in Exercise Science, establishing a professional career working as a Personal Trainer at the YMCA and Golds Gym, and serving a team of players as Captain of the University of the Sciences Soccer Team. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the applicant's medically unmitigated AWOL offenses.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 asserted ADHD did not outweigh the medically unmitigated AWOL offenses. The Board also considered the applicant's contention regarding post-service accomplishments 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of 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:**

4/9/2024

**X**

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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