

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, suffering medical injuries from shrapnel wounds to the left groin and needing further surgery. The applicant also contends suffering from PTSD and anxiety and that the mistakes made were associated with medicine the applicant was taking. An upgrade would also allow the applicant to obtain better employment.

b. **Board Type and Decision:** In a records review conducted on 27 June 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:** 21 November 2014

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 16 April 2014, the applicant was charged with:

Charge I: Violating Article 80, UCMJ:

Specification 1: On or about 20 November 2013, attempt to wrongfully appropriate Army Emergency Relief Funds, of a value more than \$500, the property of Army Emergency Relief.

Specification 2: On or about 30 November 2012, attempt to steal Traumatic Servicemember's Group Life Insurance payment of a value of over \$500, property of Prudential Insurance Company of America.

Charge II: Violating Article 121, UCMJ:

Specification 1: On or about 10 July 2013, wrongfully appropriate Army Emergency Relief Funds, of a value more than \$500, the property of Army Emergency Relief.

Specification 2: On or about 26 August 2013, wrongfully appropriate Army Emergency Relief Funds, of a value more than \$500, the property of Army Emergency Relief.

Specification 3: On or about 11 October 2013, wrongfully appropriate Army Emergency Relief Funds, of a value more than \$500, the property of the Army Emergency Relief.

Specification 4: on or about 30 October 2013, wrongfully appropriate Army Emergency Relief Funds, of a value more than \$500, the property of Army Emergency Relief.

Charge III: Violating Article 134, UCMJ:

Specification 1: On or about 19 July 2013, wrongfully and willfully impersonate a noncommissioned officer of the Army, by stating the applicant was SGM D. V., with the intent to defraud L. D. at the Air Force Aid Society to obtain Army Emergency Relief Funds and exercising the authority of SGM D. V. by giving approval for the loan, such conduct being prejudicial to the good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Specification 2: On or about 26 August 2013, wrongfully and willfully impersonate a noncommissioned officer of the Army, by stating the applicant was SGM D. V., with the intent to defraud L. D. at the Air Force Aid Society to obtain Army Emergency Relief Funds and exercising the authority of SGM D. V. by giving approval for the loan, such conduct being prejudicial to the good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Specification 3: On or about 11 October 2013, wrongfully and willfully impersonate a noncommissioned officer of the Army, by stating the applicant was SGM D. V., with the intent to defraud M. S. at the Air Force Aid Society to obtain Army Emergency Relief Funds and exercising the authority of SGM D. V. by giving approval for the loan, such conduct being prejudicial to the good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Specification 4: On or about 30 October 2013, wrongfully and willfully impersonate a noncommissioned officer of the Army, by stating the applicant was SGM T. Q., with the intent to defraud E. T. at the Air Force Aid Society to obtain Army Emergency Relief Funds and exercising the authority of SGM T. Q. by giving approval for the loan, such conduct being prejudicial to the good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(2) Legal Consultation Date: 3 November 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: 6 November 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 March 2012 / 3 years

- b. Age at Enlistment / Education / GT Score:** 25 / High School Graduate / 92
- c. Highest Grade Achieved / MOS / Total Service:** E-6 / 11C30, Indirect Fire Infantry / 9 years, 1 months, 4 days
- d. Prior Service / Characterizations:** RA, 18 October 2005 – 10 December 2007 / HD
RA, 11 December 2007 – 18 March 2012 / HD
- e. Overseas Service / Combat Service:** SWA / Afghanistan (1 May 2011 – 18 August 2011); Iraq (14 October 2006 – 24 December 2007; 1 April 2009 – 12 October 2009)
- f. Awards and Decorations:** ACM-2CS, ICM-3CS, ARCOM-2, AAM-3, AGCM-2, NDSM, GWOTSM, NCOPDR, ASR, OSR
- g. Performance Ratings:** 6 September 2011 – 1 May 2012 / Fully Capable
2 May 2012 – 15 January 2013 / Fully Capable
16 January 2013 – 11 October 2013 / Marginal
- h. Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 13 September 2013, for failing to obey a lawful order on or about 24 February 2013; by wrongfully leaving the local residence while on quarters and on or about 24 February 2013, failing to obey a lawful order by wrongfully traveling outside the 250 mile radius without prior approval. The punishment consisted of a reduction to E-5; forfeiture of \$1,353 pay per month for two months (suspended); and extra duty and restriction for 30 days.

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

- i. Lost Time / Mode of Return:** None
- j. Behavioral Health Condition(s):**

(1) Applicant provided: Operative Record, 30 May 2013, reflects a diagnosis.

VA/DOD Joint Disability Evaluation Board Claim, 21 August 2013, the applicant noted medical conditions in the comments section.

(2) AMHRR Listed: Sanity Review Board Evaluation, 18 August 2014, reflects there was no evidence of a severe mental disease or defect, such as which would impair reality testing, present at the time of the alleged criminal conduct; the applicant was able to appreciate the nature and quality or wrongfulness of the conduct; and the applicant was able to understand the nature of the proceedings and was able to cooperate with the defense team.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; three DA Forms 2166-8; DD Form 689; Hardin Memorial Hospital Imaging and Therapeutic Services Report; three DA Forms 3349; Operative Record; Memorandum Thru DCCS; VA Form 21-0819.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) 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, 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.

(6) 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 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 Army Military Human Resource Record (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 good service, including three combat tours. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends suffering from medical injuries from shrapnel wounds to the left groin and needing further surgery. The applicant also suffers from PTSD and anxiety and contends mistakes the applicant made were associated with the medication the applicant was taking for the conditions. The applicant provided Operative Record, 30 May 2013, reflecting a diagnosis; and a VA/DOD Joint Disability Evaluation Board Claim, 21 August 2013, wherein the applicant noted medical conditions in the comments section. The AMHRR contains Sanity Review Board Evaluation, 18 August 2014, which reflects there was no evidence of a severe mental disease or defect, such as which would impair reality testing, present at the time of the alleged criminal conduct; the applicant was able to appreciate the nature and quality or wrongfulness of the conduct; and the applicant was able to understand the nature of the proceedings and was able to cooperate with the defense team. The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's 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 applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, PTSD, TBI, Anxiety Disorder NOS, and Depressive Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found in service diagnoses of an Adjustment Disorder, PTSD, TBI, Anxiety Disorder NOS, and Depressive Disorder NOS.

(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's behavioral health conditions do not mitigate or excuse the discharge. None of the applicant's conditions (Adjustment Disorder, PTSD, TBI, Anxiety Disorder NOS, Depressive Disorder NOS) have a nexus with wrongfully appropriating Army Emergency Relief funds, attempting to steal a life insurance payment, or impersonating an NCO with intent to defraud since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. In addition, the applicant underwent a Sanity Review Board Evaluation that determined that the applicant's reality testing was not impaired by any BH conditions at the time of the misconduct that led to the separation. This further supports that none of the applicant's BH conditions directly contributed to the misconduct. Accordingly, there is no mitigation in this case. With regards to the applicant's contention that the medicine being taking contributed to the misconduct, prescription opioids taken at directed time and in the proper dosage do not interfere with reality testing. Thus, it is more likely than not that the applicant's prescribed opioids were not contributory to the misconduct.

(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, Post Traumatic Stress Disorder, Traumatic Brain Injury, Anxiety Disorder NOS, or Depressive Disorder NOS outweighed the applicant's medically unmitigated offenses of wrongfully appropriating Army Emergency Relief funds, attempting to steal a life insurance payment, or impersonating an NCO with intent to defraud.

b. Response to Contention(s):

(1) The applicant contends suffering from medical injuries from shrapnel wounds to the left groin and needs further surgery. The applicant also suffers from PTSD and anxiety. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the documented physical injuries or BH conditions outweighed the applicant's medically unmitigated offenses that led to separation.

(2) The applicant contends good service, including three combat tours. The Board considered this contention and noted the applicant's length of service, combat service, and awards. The Board determined that these factors did not outweigh the applicant's medically unmitigated offenses that led to separation.

(3) The applicant contends that the mistakes made were from the medication being taken. The Board liberally considered this contention with input from the Board's Medical Advisor and determined that the applicant's medication does not mitigate or excuse the misconduct, especially if taken as prescribed.

(4) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

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 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 to the current evidentiary record, the applicant's Adjustment Disorder, PTSD, TBI, Anxiety Disorder NOS, and Depressive Disorder NOS did not outweigh the applicant's medically unmitigated offenses of wrongfully appropriating Army Emergency Relief funds, attempting to steal a life insurance payment, or impersonating an NCO with intent to defraud. The Board also considered the applicant's contention regarding good service but 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 Honorable characterization.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts. 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:

7/26/2024

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001186

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs