

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

The applicant seeks relief contending, in effect, being diagnosed with PTSD in 2014 by the VA. The applicant suffered from this illness prior to being assigned to Fort Hood. At the time of discharge the applicant did not receive a psychological examination or treatment for the PTSD.

b. **Board Type and Decision:** In a records review conducted on 27 June 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the AWOL and disrespect offenses that served as the BOS. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD and RE code were proper and equitable and voted not to change them.

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:** 19 February 2002

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 16 January 2002, the applicant was charged with:

Charge I: Violating Article 86, UCMJ:

Specification 1: On or about 20 December 2001, without authority, absent oneself from the unit and did remain so absent until 8 January 2002.

Specification 2: On or about 27 November 2001, without authority, absent oneself from the unit and did remain so absent until 13 December 2001.

Charge II: Violating Article 89, UCMJ. The Specification: On or about 13 December 2001, the applicant behaved oneself with disrespect towards CPT K. A. W.

(2) **Legal Consultation Date:** 22 January 2002

(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: 4 February 2002 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 23 February 1999 / 3 years

b. **Age at Enlistment / Education / GT Score:** 17 / GED / 95

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 63J10, Quartermaster and Chemical Equipment Repairer / 2 years, 8 months, 2 days

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

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

f. **Awards and Decorations:** ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Three positive urinalysis reports for THC on collection dates of 26 January, 26 March and 11 April 2001.

MPR Number 01106-01-MPC034, 10 February 2001, reflects the applicant was being investigated for wrongful possession of marijuana and wrongful possession of drug paraphernalia.

Military Police Desk Blotter, 9 March 2001, information received from Killeen police department on 9 February 2001, revealed at 1550 hours on 8 February 2001, Officer S. arrested the applicant at the civil police liaison office, where the applicant was being detained on warrant for possession of marijuana under two ounces. The applicant was transported and further processed and jailed.

MPR Number 01066-01 MPI Number 00330-01, 20 March 2001, reflects SSG D. reported to the Military Police Desk Sergeant a found contraband. SSG D. reported while conducting an inventory of the applicant's barracks room and found drug paraphernalia, which was suspected to be marijuana. The suspected marijuana was tested which revealed positive results.

General Officer Reprimand, 27 March 2001, reflects the applicant was reprimanded for the wrongful possession of a controlled substance (marijuana). On 8 February 2001, the applicant was arrested for possession of marijuana under two ounces.

General Officer Reprimand, 20 April 2001, reflects the applicant was reprimanded for the wrongful use of a controlled substance (marijuana) as indicated by a command directed urinalysis conducted on 26 March 2001.

CID Report of Investigation, 11 May 2001, investigation established probable cause to believe the applicant wrongfully used marijuana.

General Officer Memorandum of Reprimand, 18 May 2001, reflect the applicant was reprimanded for the wrongful use of a controlled substance (marijuana) as indicated by a command directed urinalysis conducted on 11 May 2001.

FG Article 15, 27 July 2001, for failing to go to the time prescribed to the appointed place of duty on or about 15 and 20 November 2000; on or about 10 January 2001 without authority absent oneself from the unit and did remain so absent until on or about 17 January 2001; on or about 7 December 2000, without authority absent oneself from the unit and did remain so absent until on or about 1 January 2001; on or between 25 February and 26 March 2001, wrongfully use marijuana; and, on or between 13 March and 11 April 2001, wrongfully use marijuana. The punishment consisted of a reduction to E-1; forfeiture of \$500 pay per month for one month, and extra duty for 45 days.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: 107 days:

NIF, 7 December 2000 – 31 December 2000 / NIF
NIF, 10 January 2001 – 16 January 2001 / NIF
NIF, 8 February 2001 – 1 March 2001 / NIF
NIF, 1 August 2001 – 20 August 2001 / NIF
AWOL, 27 November 2001 – 12 December 2001 / NIF
AWOL, 20 December 2001 – 7 January 2002 / NIF
NIF, 8 January 2002 – 8 January 2002 / NIF
NIF, 9 January 2002 – 10 January 2002 / NIF
NIF, 17 February 2002 – 19 February 2002 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Progress Notes, undated, which 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; DD Form 214; VA Progress Notes.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been a law-abiding citizen.

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 applicant contends suffering from PTSD before being stationed at Fort Hood and no psychological examination or treatment was provided to the applicant before being discharged. The applicant was diagnosed with PTSD by the VA and provided VA Progress Notes, undated, which reflects a diagnosis. The AMHRR does not contain a mental status evaluation (MSE). The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

Since being discharged, the applicant has been a law-abiding citizen. 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: None. However, the applicant asserts PTSD, 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 self-asserts having PTSD during military service which is supported by the VA medical record which diagnosed the applicant with PTSD associated with military trauma.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant self-asserts having PTSD during military service which is supported by the VA medical record which diagnosed the applicant with PTSD associated with military trauma. Given the nexus between PTSD, avoidance, and difficulty with authority, the AWOLs and disrespect that led to the applicant's separation are mitigated.

(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 Post Traumatic Stress Disorder outweighed the applicant's AWOL and disrespect offenses.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD before being stationed at Fort Hood and no psychological examination or treatment was provided to the applicant before being discharged. The applicant was diagnosed with PTSD by the VA. The Board liberally considered

this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL and disrespect offenses.

(2) Since being discharged, the applicant has been a law-abiding citizen. The Board considered this contention during proceedings and did not find that the applicant's post-service behavior warranted further upgrade. Obeying laws does not necessarily justify favorable actions.

c. The Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL and disrespect offenses. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General because the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL and disrespect offenses. The General characterization of service is proper and equitable given the diagnosis timeline and considerable amount of additional misconduct (drug use/drug paraphernalia possession) in the applicant's file that fell below the 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, the reason the applicant was discharged was both proper and equitable.

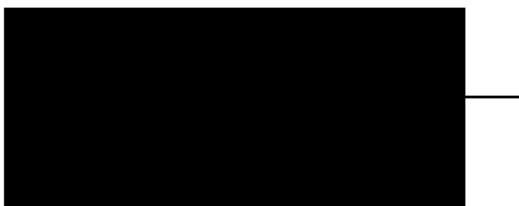
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

7/29/2024



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001194

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