

**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, being given a traumatic brain injury evaluation order and receiving a diagnosis of post-traumatic stress disorder (PTSD). The applicant states not being offered the chance to undergo testing for a traumatic brain injury and their PTSD diagnosis was disregarded while they were being discharged. The applicant contends in addition to taking antidepressants and sleeping medications, they were having weekly treatment for PTSD from two different physicians. The applicant contends one of the mitigating factors in their discharge was PTSD.

b. **Board Type and Decision:** In a records review conducted on 2 July 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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 7 June 2011

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 27 September 2009, the applicant was charged with:

Charge I: Violating Article 85, UCMJ, for being in Desertion from 27 September 2009, without authority and with intent to remain away there from permanently, absent oneself from their unit, and did remain so absent in desertion.

Charge II: Violating Article 86, UCMJ, for being AWOL from 28 August 2009, without authority. Absent oneself from their unit and did remain absent in desertion.

On 12 March 2010, the applicant was charged with: Violating Article 86, UCMJ: On or about 10 February 2010, without authority absent oneself from their unit and did remain so absent.

On 22 February 2011, the applicant was charged with: Charge: Violating Article 86, UCMJ:

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**AR20210001230**

Specification 1: on or about 29 December 2010, without authority, fail to go at the time prescribed to their appointed place of duty,

Specification 2: on or about 29 December 2010, without authority, fail to go at the time prescribed to their appointed place of duty.

Specification 3: on or about on or about 28 August 2009, without authority, absent oneself from their unit, and did remain so absent until they were apprehended on or about 7 February 2010.

Specification 4: on or about on or about 10 February 2010, without authority, absent oneself from their unit, and did remain so absent until they were apprehended on or about 4 November 2010.

On 27 April 2011, the applicant was charged with:

Additional Charge I: Violating Article 86, UCMJ:

Specification 1: on diver's occasions, between on or about 2 March 2011 and on or about 23 March 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation located at or near Building 2366.

Specification 2: on diver's occasions, between on or about 1 April 2011 and on or about 27 April 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation located at or near Building 2366,

Additional Charge II: Violating Article 90, UCMJ, at or near Fort Knox, Kentucky, having received a lawful command from CPT P., their superior commissioned officer, then known by the accused to be their superior commissioned officer, to "remain at the Battalion Headquarters," or words to that effect, did, on or about 22 March 2011, willfully disobey the same.

Additional Charge III: Violating Article 91, UCMJ, at or near Fort Knox, Kentucky, on or about 21 March 2011, was disrespectful in language and deportment toward Sergeant First Class F., a noncommissioned officer, then known to the accused to be a noncommissioned officer, who was then in the execution of their office, by talking to them in a raised voice, attempting to walk away, and by saying, "I am suffering from PTSD and cannot be held responsible for my actions," or words to that effect.

**(2) Legal Consultation Date:** 18 May 2011

**(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:** undated / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 17 January 2009 / 4 years

- b. Age at Enlistment / Education / GT Score:** 23 / GED / 98
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92G10, Food Service Operations / 3 years, 11 months, 10 days
- d. Prior Service / Characterizations:** RA, 5 October 2006 – 16 January 2009 / HD
- e. Overseas Service / Combat Service:** SWA / Afghanistan (14 July 2008 – 19 June 2009)
- f. Awards and Decorations:** ACM-CS, AAM, GWOTSM, ASR, OSR, NATOMDL
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

Five Personnel Action forms, reflect the applicant's duty status changed as follows:

From PDY to AWOL, effective 28 August 2009;  
 From AWOL to DFR, effective 27 September 2009;  
 From PDY to AWOL, effective 10 February 2010;  
 From AWOL to DFR, effective 12 March 2010; and  
 From DFR to PDY, effective 4 November 2010.

- i. Lost Time / Mode of Return:** 8 months, 3 weeks, 2 days (AWOL, 11 February 2010 – 3 November 2010) / Apprehended by Civil Authorities

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

**(1) Applicant provided:** Health records, 7 March 2011, reflects an evaluation including a diagnosis.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Online application; two DD Forms 214; self-authored letter; medical records.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant sought treatment from the VA.

**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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(8) 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.)

(9) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 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 suffering from PTSD. The applicant provided Health records, 7 March 2011, reflecting an evaluation which included a diagnosis. The applicant's AMHRR contains no documentation of a medical diagnosis.

The applicant contends not being offered the chance to undergo testing for a traumatic brain injury and their PTSD diagnosis was disregarded while they were being discharged. 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 seeking treatment from the VA post-service. 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, Adjustment Disorder with Disturbance in Emotion, Acute Stress Reaction.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge?

**Partially.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects that the applicant has BH conditions that partially mitigates applicant's misconduct. The applicant is 70 percent SC for PTSD by the VA and has a in-service diagnosis Adjustment Disorder with Disturbance which is subsumed by PTSD. As there is a nexus between PTSD and avoidance, the applicant's misconduct characterized by AWOLs and FTRs is mitigated. Misconduct characterized by disrespect of an NCO and failing to follow a lawful order is often mitigated given the nexus between PTSD and problems with authority. However, in this instance the applicant has history of failing to follow orders that predated the deployment that led applicant's previous command to initiate separation procedure. Additionally, during the 21 March 2011 instance, the applicant expressly uttered "I am suffering from PTSD and cannot be held responsible for my actions". This suggests willful intent to manipulate the diagnosis in a manner that shields the applicant from accountability, which is not normal sequela of PTSD. For the same reason, the applicant failure to follow a lawful order is also not mitigated in this instance. Records also reflect the applicant with history of Cannabis Abuse that predated deployment, which is not mitigated by a SC diagnosis.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD, Adjustment Disorder with Disturbance in Emotion, and Acute Stress Reaction outweighed the basis for applicant's separation – willfully disobeying an order from a commissioned officer and disrespect in language and deportment to and NCO.

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

(1) The applicant contends suffering from PTSD. The Board considered this contention and determined the applicant is 70 percent SC for PTSD by the VA. However, the applicant's PTSD does not excuse, mitigate or outweigh the applicant's willfully disobeying an order from a commissioned officer and disrespect in language and deportment to and NCO basis for separation. Thus, the board voted and determined the applicant's discharge is proper and equitable.

(2) The applicant contends not being offered the chance to undergo testing for a traumatic brain injury and their PTSD diagnosis was disregarded while they were being discharged. The Board considered this contention and determined the applicant's PTSD diagnosis whether diagnosed in service or service connected, does not excuse or outweigh the applicant's misconduct of willfully disobeying an order from a commissioned officer and disrespect in language and deportment to and NCO. The applicant's discharge is proper and equitable.

(3) The applicant contends seeking treatment from the VA. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of 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 of all the evidence before the Board, the applicant's PTSD, Adjustment Disorder with Disturbance in Emotion, and Acute Stress Reaction did not excuse or mitigate the offenses of willfully disobey an order from a commissioned officer and disrespect in language and deportment to an NCO. 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:**

1/10/2025

**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