

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, going AWOL was significantly influenced by their first episode of PTSD following the 9/11 attacks, and the worry and anxiety it brought about both during and after their military service. The applicant's thinking was heavily influenced by the fear for their family following their personal observation of the unfolding of the events from the beginning to the end of September 11th. The applicant's spouse, a New York City police officer was always at risk from terrorist attacks, and their kids who were living in the city while the applicant was deployed also had a significant impact on the applicant mental health. The applicant contends an upgrade would allow them to rejoin the military.

b. **Board Type and Decision:** In a records review conducted on 4 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

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:** 26 September 2003

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

- (1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF
- (2) **Legal Consultation Date:** NIF
- (3) **Basis for Separation:** NIF
- (4) **Recommended Characterization:** NIF
- (5) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 21 February 2003 / NIF
- b. **Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 95
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 63J10, Quartermaster and Chemical Equipment Repairer / 9 years, 4 months, 3 days
- d. **Prior Service / Characterizations:** USAR, 24 May 1994 – 20 September 1994 / NA
IADT, 21 September 1994 – 3 March 1995 / HD
USAR, 4 March 1995 – 20 February 2003 / NA
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM-2, AFRMM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant provided an Investigating Officer's Report, 23 April 2004, which explained the applicant's family situation which led the applicant going AWOL from the military from 25 August to 14 September 2003. The applicant reached out to several resources to get assistance but did not get the help they needed. The applicant accepted an under other than honorable condition discharge and acknowledged they would remit monies back to the NYC police department.

The applicant provided a letter from B., Army Community Service, 22 September 2003, reflects being an advocate for Soldiers requesting a hardship discharge. The applicant had been their client for the past two months. The applicant's spouse also works for the NYC Police Department and in August was assigned to the midnight shift. This made finding and affording childcare for their three children impossible. B., assisted the applicant in trying to find childcare and then attempted to work with their unit for a discharge. The discharge took longer than usual, and the applicant returned home to assist their family. The applicant was forced to decide and although they kept in contact with the unit, the applicant was marked absent without leave (AWOL).

The applicant provided a Memorandum of Military Magistrate's conclusion, 17 September 2005, by MAJ G., JA, Military Magistrate, Fort Dix, noted, the uncontroverted evidence indicates the applicant had a significant problem with obtaining childcare for their one-year-old daughter. The applicant's attendance to their children became a direct scheduling conflict with their duty hours. The applicant informed their chain of command. The applicant's chain of command consistently discouraged them from applying for a discharge by stressing the unlikelihood of having such request granted. Taken cumulatively, the applicant was being presented with a choice between the needs of their one-year-old daughter and the Army.
- i. **Lost Time / Mode of Return:** The applicant states being AWOL for 20 days from 25 August to 14 September 2003. / This period is not annotated on the DD Form 214 block 29.
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Department of Veterans Affairs PTSD Disability Benefits Questionnaire included a medical 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 149; DD Form 214; two self-authored letters; Memorandum of Military Magistrate's conclusion; Investigating Officer's Report; Copy of two prescriptions; Official transcripts; ROP; Social Security Administration decision.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is employed by the federal government and has earned two master's degrees.

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

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

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

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

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

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

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

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

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

(4) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(6) 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of general (under honorable conditions). The applicant's actual request for discharge in lieu of trial by court-martial is void from the record. In this request, the applicant would have 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 general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents), governs the

preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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 suffering from PTSD. The applicant provided a Department of Veterans Affairs PTSD Disability Benefits Questionnaire which included a medical diagnosis. The AMHRR was void of a mental status evaluation.

The applicant contends family issues affected behavior and ultimately caused the discharge. The applicant provided an Investigating Officer's Report, 23 April 2004, explaining the applicant's family situation which led the applicant going AWOL from the military from 25 August to 14 September 2003. The applicant reached out to several resources to get assistance but did not get the help they needed. The applicant accepted an under other than honorable condition discharge and acknowledged they would remit monies back to the NYC police department. A letter from B., Army Community Service, 22 September 2003, reflects being an advocate for Soldiers requesting a hardship discharge. The applicant's spouse also worked for the NYC Police Department and in August was assigned to the midnight shift. This made finding and affording childcare for their three children impossible. B., assisted the applicant in trying to find childcare and then attempted to work with their unit for a discharge. The applicant's attendance to their children became a direct scheduling conflict with their duty hours. The applicant was presented with a choice between the needs of their one-year-old daughter and the Army. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment. matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends obtaining employment and completing a bachelor's degree and two master's degrees. 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, MDD.

(2) Did the condition exist or experience occur during military service? The Board's Medical Advisor found the applicant 50 percent SC for PTSD.

(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's behavioral health conditions mitigate the discharge. The applicant reported going AWOL in 2003 out of fear for the applicant's families' safety secondary to what the applicant believed was a terrorist attack in 2003. As there is an association between PTSD and increased hypervigilance and fear, there is a nexus between the misconduct characterized by AWOL and PTSD, such that the misconduct is 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 offense.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention during proceedings but did not address it due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(3) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to change the RE-code to a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

(4) The applicant contends obtaining employment and completing a bachelor's degree and two master's degrees. The Board considered this contention during proceedings but did not address it due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's AWOL offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3:

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's AWOL offense. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

6/26/2024



AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs