

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 the under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after being discharged from the Army in March 2011 for desertion and admittedly being AWOL, the applicant returned and asked for another chance to serve the country honorably. Following the completion of the court-martial sentence of 30 days in a local county jail, the applicant was released and returned to active duty. The applicant received orders and deployed to Afghanistan in December 2008 and returned in December 2009. The applicant proudly served on multiple missions in Afghanistan. The applicant was wounded in combat by an IED on 1 September 2009. The applicant was subsequently awarded the Purple Heart, Combat Action Badge, and Army Commendation Medal. The applicant was unsure the IED blast caused a TBI. The applicant wounded the left arm, and still has problems with numbness and movement in the left hand, as well as PTSD. The applicant was in a "daze" for several weeks afterward. Life did not appear real because the applicant was in a horrible state of mind but kept pushing forward. The applicant reenlisted in October 2009. Because the applicant's injuries were increasing, the applicant was medically evacuated from Afghanistan to Landstuhl, Germany, then moved to Fort Belvoir for further treatment. Despite being able to reenlist in October 2011, the applicant was informed of being separated from the Army almost immediately upon arrival to Fort Drum. The applicant's initial contract was set to expire in October 2010, allowing the applicant to fulfill the contract honorably. The applicant was on active duty until March 2011 and served the country honorably. The applicant is a patriotic veteran who proudly displays the American flag. The VA granted the applicant 80 percent disability for the wounds sustained while serving the country. The applicant did not deserve to be discharged from the Army, which the applicant grew to love. The DD Form 214 should reflect the applicant's honorable service.

b. **Board Type and Decision:** In a records review conducted on 25 January 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 March 2011

c. **Separation Facts:**

(1) Date of Notification of Intent to Separate: 17 February 2011

(2) Basis for Separation: The applicant was informed of the following reasons:

On 22 January 2010, the applicant assaulted A. M. F., the spouse, by striking the spouse in the head with the applicant's forehead, and forcefully pushed the elbow into the spouse's stomach.

On 16 June 2008, the applicant absented oneself from the unit, and did remain absent until 5 September 2008.

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

(4) Legal Consultation Date: On 17 February 2011, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 February 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 October 2009 / 6 years (NIF, but according to ERB, 7 December 2010)

b. Age at Enlistment / Education / GT Score: 20 / GED / 87

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 3 years, 4 months, 19 days

d. Prior Service / Characterizations: RA, 2 August 2007 – 11 October 2009 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (1 December 2008 – 1 December 2009)

f. Awards and Decorations: ACM-CS, ARCOM, PH, NDSM, GWOTSM, ASR, OSR, NATOMDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Eight Developmental Counseling Forms for performance being substandard, failing to obey an order or regulation, being insubordinate, failing to go at the time prescribed to the appointed place of duty on numerous occasions, being AWOL, disobeying an NCO, being derelict in the performance of duties, disobeying and disrespecting a commissioned officer, failing to follow instructions, and possibly being separated from active duty.

FG Article 15, 11 April 2008, for failing to go at the time prescribed to the appointed place of duty on 17 x2 and 20 March 2008 (continuation sheet is NIF). The punishment consisted of a reduction to E-1; forfeiture of \$673 pay per month for one month; and extra duty and restriction for 45 days.

CG Article 15, 10 June 2008, for failing to go at the time prescribed to the appointed place of duty on 13, 15 x2, and 16 x2 April 2008. The punishment consisted of a forfeiture of \$314 pay, and extra duty and restriction for 14 days.

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

From "Present for Duty (PDY)" to "Absent Without Leave (AWOL)," effective 16 June 2008;
From "AWOL" to "Dropped From Rolls (DFR)," effective 16 July 2008; and
From "DFR" to "PDY," effective 5 September 2008.

Record of Trial by Summary Court-Martial, reflects the applicant was charged with, and on 14 October 2008, was found guilty consistent with the plea of the following charge: The Charge: Violation of the UCMJ, Article 86, for being AWOL from 16 June 2008 until 8 September 2008. The sentence adjudged: To be confined for 30 days.

Military Police Report with civilian Arrest and Domestic Incident Reports and court Information documents, 23 January 2010, reflects the applicant was apprehended for: Domestic Disturbance, Harassment 2nd Degree, and Endangering the Welfare of a Child (off post).

i. Lost Time / Mode of Return: 83 days (AWOL, 16 June 2008 – 5 September 2008) / Surrendered to Military Authorities

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Summary of Benefits letter, 21 February 2015, reflects the applicant's combined service-connected evaluation was 80 percent, but it does not provide details on the service-connected disabilities.

(2) AMHRR Listed: Report of Medical History, 22 October 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section, in summary: Frequent trouble sleeping since September 2009; has been seen by counselor; had counseling for marriage difficulties and PTSD once a week but did not continue; marriage had become solid again; and the PTSD symptoms were under control for the most part.

Report of Behavioral Health Evaluation (BHE), 13 January 2011, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was not cleared for an administrative separation until further assessment to determine if the applicant met the retention standards of AR 40-501. The applicant was diagnosed with: Adjustment Disorder with anxiety and depressed mood. The BHE was considered by the separation authority.

Report of Behavioral Health Evaluation (BHE), 1 March 2011, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was cleared for any administrative actions deemed appropriate by command. The applicant was diagnosed with: Adjustment Disorder with Anxiety. The BHE was considered by the separation authority.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; Purple Heart certificate; Oath of Reenlistment certificate; and VA letter.

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) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being discharged for desertion, which is unreasonable because of having served a 30-day confinement for the AWOL offense, followed by serving in Afghanistan from December 2008 to 2009, and being allowed to reenlist in October 2009. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends having served on multiple missions in Afghanistan with the head held high, being wounded in combat, and awarded the Purple Heart, Combat Action Badge, and the Army Commendation Medal, and serving honorably. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being wounded in combat from an IED blast, having continuing issues with the wound to the left arm such as numbness and movement in the left hand, as well as PTSD, and the VA granting 80 percent disability for the wounds sustained while serving the country. The applicant provided a VA letter indicating a combined disability rating of 80 percent. The applicant's AMHRR contains documentation which supports an in-service behavioral health issue relating to insomnia and PTSD symptoms, and diagnoses of adjustment disorder with anxiety and depressed mood. The record shows the applicant underwent two separate behavioral health evaluation (BHE) on 13 January and 1 March 2011, which indicate the applicant was mentally responsible and was able to recognize right from wrong. The BHE were considered by the separation authority.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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 and PTSD. Additionally, the applicant asserts a TBI, 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 was diagnosed in service with an Adjustment Disorder and a Concussion, which supports the applicant's asserted TBI. The applicant is also diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience 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 provide medical mitigation. There is no natural sequela between an Adjustment Disorder, TBI, or PTSD and perpetrating spousal physical abuse. And while there is a nexus a between PTSD and avoidance, the applicant's AWOL occurred prior to combat, which is the trauma index for the PTSD diagnosis. The applicant's diagnoses of an Adjustment

Disorder and TBI also occurred after the AWOL. There is no indication that any of the applicant's BH conditions contributed to the AWOL since none of them existed at the time of the AWOL.

(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, PTSD, and self-asserted TBI outweighed the medically unmitigated AWOL offense.

b. Response to Contention(s):

(1) The applicant contends being wounded in combat from an IED blast, having continuing issues with the wound to the left arm such as numbness and movement in the left hand, as well as PTSD, and the VA granting 80 percent disability for the wounds sustained while serving the country. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, and self-asserted TBI outweighed the medically unmitigated AWOL offense due to the offense taking place prior to the traumatic incident(s).

(2) The applicant contends having served on multiple missions in Afghanistan with the head held high, being wounded in combat, and awarded the Purple Heart, Combat Action Badge, and the Army Commendation Medal, and serving honorably. The Board considered the totality of the applicant's six years of service but determined that the applicant's service record does not outweigh the applicant's medically unmitigated AWOL offense.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant or the applicant's representative 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 Adjustment Disorder, PTSD, and self-asserted TBI did not outweigh the medically unmitigated AWOL offense. The Board also considered the applicant's good service contention and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an 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:

2/13/2024

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

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