

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, enlisting at the age of 17 had been a longstanding ambition. During deployment, the applicant flew numerous missions, inserting Infantry Soldiers and VIP logistic missions. The most memorable experiences were flying with General D. P. and serving as a private crew chief to General J. S. It was difficult to accept, as a young Soldier, upon returning to Fort Campbell, to have been impacted by the events of diversity, racism, hostility, discrimination, and misguidance by the chain of command, which resulted in the discharge. The applicant had to overcome the events leading to the discharge for the past ten years. Despite the lack of educational benefits, the applicant graduated first in the class from an ITT Technical Institute with a degree in Electronics engineering. It also has been unsuccessful back-and-forth battle with the VA over disability claims which were found to be not service connected.

b. **Board Type and Decision:** In a records review conducted on 11 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 26 August 2004

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 August 2004

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

On 19 May 2004, the applicant received a Summarized Article 15 for failing to be at the appointed place of duty at the prescribed time and for dereliction of duty (two specifications). The punishment was extra duty and restriction for seven days, and an oral reprimand.

The applicant received a Field Grade Article 15 on 21 July 2004 for wrongful use of illegal drugs and for failure to report to the appointed place of duty at the prescribed time. The applicant was reduced to Private (E-1), forfeited \$596 pay, and extra duty and restriction for 45 days. The use of illegal drugs was unacceptable and prevented the applicant from working on aircraft.

The applicant consistently failed to meet the standards set forth in AR 670-1, i.e., maintaining a military appearance, and being in the proper uniform for duty.

The applicant was consistently late for formations and work calls, and the attitude was very poor.

On multiple occasions, the applicant deceived the chain of command on the whereabouts and in explanations regarding the misconduct.

The applicant violated barracks standard operating procedures and rules on multiple accounts.

The work efficiency was negligible, and the applicant had difficulty working with peers.

The applicant ignored all attempts made by the command to rehabilitate, and the misconduct would no longer be tolerated by the unit, the 101st Airborne Division (Air Assault), or the United States Army.

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

(4) Legal Consultation Date: 9 August 2004

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 10 August 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 May 2002 / 6 years

b. Age at Enlistment / Education / GT Score: 17 / GED / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 15T10, UH-60 Helicopter Repairer / 2 years, 3 months, 26 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (28 February 2003 – 23 January 2004)

f. Awards and Decorations: AAM, ARCOM, GWOTEM, GWOTSM, NDSM, ASR, OSB-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Nine Developmental Counseling Forms for various acts of misconduct.

Summarized Article 15, 14 May 2004, for failing to go at the time prescribed to the appointed place of duty on 10 May 2004 (continuation sheet NIF). The punishment consisted of extra duty and restriction for 7 days, and an oral reprimand.

FG Article 15, 21 July 2004, for failing to go at the time prescribed to the appointed place of duty on 4 June 2004 and wrongfully using marijuana (between 22 May and 21 June 2004). The

punishment consisted of a reduction to E-1; forfeiture of \$596 pay; and extra duty and restriction for 45 days.

Report of Mental Status Evaluation, 22 July 2004, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Tampa Vet Center letter, 23 April 2012, reflects the applicant had a diagnosis of PTSD, chronic symptoms caused by the exposure to traumatic combat experiences in Iraq, and was receiving counseling.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Vet Center letter; self-authored statement; DD Form 214; Senate letter; and ARBA letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant graduated from an ITT Technical Institute with an electronics engineering degree.

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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 good service, including a combat tour and making countless flight missions during deployment. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends harassment, discrimination, and misguidance by members of the chain of command. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment or discrimination.

The applicant contends obtaining an electronics engineering degree. 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.

The applicant contends battling with the VA for disability claims. Eligibility for veterans' benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant's AMHRR contains documentation which supports a diagnosis of PTSD. The applicant provided a Vet Center Therapist letter indicating a diagnosis and treatment for PTSD. The record shows the applicant underwent a mental status evaluation (MSE) on 22 July 2004, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Post Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is 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 actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD provides partial mitigation for the basis of separation. Given the nexus between PTSD with avoidance, self-medicating with substances, and difficulty with authority, the FTRs, wrongful use of illegal drugs, negligible work efficiency, and having a poor attitude are mitigated. The remaining misconduct of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, violating barracks standard operating procedures and rules, and difficulty working with peers is not mitigated since PTSD does not interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(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 Post Traumatic Stress Disorder outweighed the medically unmitigated offenses of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, and violating barracks standard operating procedures and rules.

b. Response to Contention(s):

(1) The applicant's AMHRR contains documentation which supports a diagnosis of PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder outweighed the medically unmitigated offenses of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, and violating barracks standard operating procedures and rules. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends good service, including a combat tour and making countless flight missions during deployment. The Board considered the applicant's two years of service, including a tour in Iraq, but determined that the applicant's record does not outweigh the

applicant's medically unmitigated offenses of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, and violating barracks standard operating procedures and rules.

(3) The applicant contends harassment, discrimination, and misguidance by members of the chain of command. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was harassed, discriminated against, or misguided by the chain of command.

(4) The applicant contends obtaining an electronics engineering degree. The Board considered the applicant's post-service accomplishments but determined that the applicant's educational achievements do not outweigh the applicant's medically unmitigated offenses of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, and violating barracks standard operating procedures and rules.

(5) The applicant contends battling with the VA for disability claims. 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. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of not maintaining a military appearance, not being in the proper uniform for duty, deceiving the chain of command, and violating barracks standard operating procedures and rules. The Board also considered the applicant's contentions regarding harassment and discrimination from the unit, and good service and post-service achievements, 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 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:

2/20/2024

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