

1. Applicant's Name: [REDACTED]

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

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

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

The applicant seeks relief contending, in effect, upgrading their discharge for the purpose of being able to receive treatment for their service-connected disabilities. The applicant contends being in constant pain due to multiple surgeries in their groin area, being constantly on guard, and not sleeping much.

b. **Board Type and Decision:** In a records review conducted on 25 January 2024, and by a 3-2 vote, the Board determined that the characterization of service was inequitable. The applicant's failure to report (FTR) misconduct is mitigated by the applicant's PTSD. The remaining misconduct (having sexual intercourse with a person not the applicant's spouse) is mitigated based on the applicant's length and quality of service, to include combat service. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to General. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more detail regarding the Board's decision.

Board member names available upon request.

1. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 17 December 2007

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 26 November 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons: Failure to report to their appointed place of duty at the appointed time while deployed to Iraq and for having sexual intercourse with a person not the applicant's spouse in the guard tower when they were on duty as the NCOIC.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 27 November 2007

(5) Administrative Separation Board: On 25 October 2007, the applicant unconditionally waived consideration of the case before an administrative separation board as part of an Offer to Plead Guilty in a Summary Court-Martial proceedings.

On 27 November 2007, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 6 December 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 24 November 2006 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 24 / High School Graduate / 93
- c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 92R2P, Parachute Rigger / 6 years, 4 months, 18 days
- d. **Prior Service / Characterizations:** RA, 17 September 2001 – 21 April 2004 / HD
RA, 22 April 2004 – 8 March 2005 / HD
RA, 9 March 2005 – 23 November 2006 / HD
- e. **Overseas Service / Combat Service:** Alaska, SWA / Iraq (2 August 2001 – 16 September 2001; 2 January 2003 – 29 June 2003)
- f. **Awards and Decorations:** AGCM, NDSM, GWOTSM, ICM, ASR, OSR, CAB
- g. **Performance Ratings:** 1 September 2005 – 31 August 2006 / Marginal
1 September 2006 – 30 June 2007 / Marginal
- h. **Disciplinary Action(s) / Evidentiary Record:** Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I Article 86: Specification: on or about 22 June 2007, without authority, fail to go at the time prescribed to the appointed place of duty. Plea: Guilty; Finding Guilty.

Charge II Article 113: Specification: on or about 25 April 2007, at or near Forward Operating Base Kalsu, Iraq, while receiving special pay under 37 U.S.C. § 310, being posted as a sentinel at Tower 10, was found sleeping upon their post. Plea: Not Guilty; Finding Not Guilty.

Charge III Article 120: Plea: Not Guilty; Finding Dismissed.

Charge IV Article 134:

Specification 1: A married Soldier, did, at or near Forward Operating Base Kalsu, Iraq, on or about, 15 May 2007, wrongfully have sexual intercourse with Private First-Class W., a Soldier not their spouse. Plea: Guilty; Finding Guilty.

Specification 2: Plea: Not Guilty; Finding Dismissed.

Specification 3: Plea: Not Guilty; Finding Dismissed.

The sentence adjudged: 2 November 2007; Forfeiture \$500; reduction to E-4.

Report of Mental Status Evaluation, 21 November 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. 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 command referred to Behavioral Health Service for a Mental Status Evaluation because of misconduct resulting in a court martial. The applicant had been considered for separation from the service under Chapter 14-12 (c), AR 635- 200. There was no evidence of mental disorder which would have affected the judgement and reasoning or required disposition through medical channels. The applicant attempted to deceive regarding their MSE as they admitted to knowingly distorting psychological testing. The applicant was cleared for action deemed appropriate by command.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. **Lost Time / Mode of Return:** None

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

(1) **Applicant provided:** Letter of support from M., reflecting they had not been around the applicant very much since being out the Army. The applicant had changed after they came back from Iraq. Their child is only 14 and does not understand why their parent is different. The child knows the applicant risked their life in Iraq and was hit by an IED. The child states the applicant needs counseling and needs to see a doctor for their wounds.

Letter of support from H., reflecting as their parent, they have been around the applicant all their life prior to the Army, and their child was fine. The applicant went to Iraq twice and during those times the applicant changed drastically. The applicant is not the same person anymore. They have watched the applicant wake up covered in sweat because of continuing nightmares. The applicant's weight is up and down and barely leaves the house. The applicant is anxious and paranoid when put into a new environment or situation. The applicant had moments of anger outburst and sometimes becomes very scary. The applicant had many surgeries while serving in the Army for injuries while deployed and now struggles daily with their wounds, and still needs additional surgery. The applicant served their country and it is only fair for the applicant to get the right treatment and care.

Letter of support from A.H., reflects they have known the applicant for 15 years. The applicant received a combat badge for their service, and it saddens them the applicant had struggled mentally and financially because of mistakes made in the past.

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; three letters of support.

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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 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.

(6) 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.

(7) 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 in constant pain due to multiple surgeries in their groin area, constantly on guard, and does not sleep much. The applicant provided three letters of support which in effect state, the applicant needs counseling and needs to see a doctor for their wounds and still needs additional surgeries. The applicant went to Iraq twice and during those times which drastically changed the applicant and is not the same person anymore. The applicant confided in A.H. about their two deployments to Iraq and had been suffering from PTSD due to their service-connection. The applicant informed A.H., while deployed in Iraq they experienced life altering and life-threatening situations. The applicant had seen people burn in front of them, as well as, being hit by an IED and having to have multiple surgeries because of this. The applicant suffered from Nightmares, flashbacks, and anxiety which A.H., had personally witnessed the applicant go through. The applicant's AMHRR includes a Report of Mental Status Evaluation, 21 November 2007, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. 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 command referred to Behavioral Health Service for a Mental Status Evaluation because of misconduct resulting in a court martial. The applicant had been considered for separation from the service under Chapter 14-12 (c), AR 635- 200. There was no evidence of mental disorder which would have affected the judgement and reasoning or required disposition through medical channels. The applicant attempted to deceive regarding their MSE as they admitted to knowingly distorting psychological testing. The applicant was cleared for action deemed appropriate by command. The MSE was considered by the separation authority.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's 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.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD.

(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 excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed

and service connected by the VA for PTSD, which provides partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, the FTR is mitigated. However, there is no natural sequela between PTSD and having sexual intercourse with a person not the applicant's spouse in the guard tower when on duty as the NCOIC of the tower 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's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the medically unmitigated offense of having sexual intercourse with a person not the applicant's spouse in the guard tower when on duty as the NCOIC.

b. Response to Contention(s):

(1) The applicant contends being in constant pain due to multiple surgeries in their groin area, constantly on guard, and do not sleep much. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the medically unmitigated offense of having sexual intercourse with a person not the applicant's spouse in the guard tower when on duty as the NCOIC. The Board did find that the applicant's service record warranted an upgrade of the applicant's characterization of service to General. This upgrade may affect the applicant's eligibility for veteran's benefits.

(2) The applicant contends an upgrade of the discharge would allow Veteran's benefits. The Board considered this contention and determined that eligibility for Veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigating the FTR. The Board further determined the applicant's length and quality of service, to include combat service, outweighed the applicant's offense of having sexual intercourse with a person not the applicant's spouse. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them. The applicant has exhausted all 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 to change the applicant's characterization of service to General because the applicant's length of service, to include combat service in Iraq, outweighed the applicant's misconduct of having sexual intercourse with a person not the applicant's spouse in the guard tower when on duty as the NCOIC. The applicant's General discharge is proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable. Therefore, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

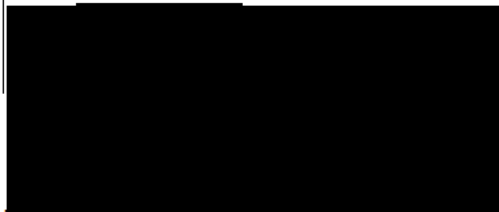
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

2/15/2024



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