

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, the medical board discharge recommendation by a psychiatrist was improperly denied by CPT D. H. During a second deployment in Afghanistan, the applicant was shot in the helmet, sustained a traumatic brain injury, and was MEDEVAC'd to Fort Hood where the applicant was promoted to E-5 and received a second Purple Heart. The applicant was supposed to receive a medical board at Fort Hood. The applicant asked if they went to a non-combat MOS if they could reenlist. The applicant reenlisted as a 25B10 (IT Specialist) and was assigned to Fort Gordon. The Fort Hood Psychiatrist provided the applicant with a no PT Profile which became an issue with CPT H. since the applicant did not have to report for duty until 0900. CPT H. used this as a record of AWOL. The applicant was demoted to E-1 with multiple Article 15's. The applicant saw a psychiatrist at Fort Gordon who recommend the applicant be Medically Boarded out. CPT H. denied the recommendation of the discharge. The applicant received more Article 15's and was assigned extra duty. Due to the medication and the no PT Profile, the applicant was unable to fulfill their duties. CPT H. counted the applicant AWOL, so the applicant went AWOL. CPT H. knew the applicant was being sent to the Medical Battalion to begin a medical chapter. When the option came for the discharge, the applicant believed there was no other choice, the applicant was not given any alternatives. The applicant has increasing problems with short term memory and on 10 February 2014, at the first decent employment the applicant has had, the applicant had a syncopal episode. The applicant was diagnosed with absence seizures and the applicant has not been able to work or drive since.

b. **Board Type and Decision:** In a records review conducted on 1 February 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 offenses of AWOL and Disrespect toward an NCO. 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 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 30 January 2009

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 14 January 2009, the applicant was charged with:

Charge I: Violating Article 85, UCMJ. The Specification: On or about 16 September 2008, a time of war without authority and with intent to remain away therefrom permanently, absent oneself from the unit, and did remain so absent in desertion until on or about 7 January 2009.

Charge II: Violating Article 86, UCMJ:

Specification 1: On or about 9 September 2008 without authority, absent oneself from the unit and did remain so absent until on or about 10 September 2008.

Specification 2: On or about 11 September 2008, without authority, absent oneself from the unit, and did remain so absent until on or about 15 September 2008.

Charge III: Violating Article 91, UCMJ. The Specification: On or about 15 September 2008, the applicant was disrespectful in language toward SSG S. A. H., a noncommissioned officer, then known by the applicant to be a noncommissioned officer, who was in the execution of office, by saying "Fuck you I'm not giving you my fucking knife," and "Fucking bitch," or words to that effect.

(2) Legal Consultation Date: 23 January 2009

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 29 January 2009 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 January 2006 / 3 years, 16 weeks / Based on the applicant's AMHRR, the DD Form 214 block 12a, reflects an erroneous date of 9 January 2006.

b. Age at Enlistment / Education / GT Score: 17 / GED / 115

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13B10, Cannon Crewmember / 2 years, 7 months, 28 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (4 October 2006 – 7 September 2007)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 12 August 2008, for being disrespectful in language toward CSM C., on or about 20 July 2008; being disrespectful in language toward 1SG K. on or about 29 July 2008; disobey a lawful order from 1SG K. on or about 29 July 2008; and absent oneself from the unit on or about 29 July 2008 and did remain so absent until on or about 30 July 2008. The punishment consisted of a reduction to E-1, however, E-2 suspended, forfeiture of \$673 pay per month for one month (suspended); and extra duty for 30 days.

Record Of Supplementary Action Under Article 15, UCMJ, 9 September 2008, reflects the suspended portion of the punishment imposed on 14 August 2008, was vacated for: Article 86, failure to go at the time prescribed to the appointed place of duty.

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

- From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 29 July 2008;
- From "AWOL" to "PDY," effective 30 July 2008;
- From "PDY" to "AWOL," effective 9 September 2008;
- From "AWOL" to "PDY," effective 10 September 2008;
- From "PDY" to "AWOL," effective 11 September 2008;
- From "AWOL" to "PDY," effective 15 September 2008;
- From "PDY" to "AWOL," effective 16 September 2008;
- From "AWOL" to "Dropped From Rolls (DFR)," effective 16 October 2008;
- From "Dropped From Rolls (DFR)," to "Confined by Civil Authorities (CCA)," effective 7 January 2009;
- From "Confined by Civil Authorities (CCA)," to "Confined by Military Authorities (CMA)," effective 16 January 2009;
- From "CMA" to "PDY," effective 30 January 2009; and
- From "CCA" to "PDY," effective 30 January 2009.

Four Developmental Counseling Forms, for being AWOL; insubordinate conduct; and provoking speeches or gestures.

Charge Sheet as described in previous paragraph 3c(1).

i. Lost Time / Mode of Return: 141 days:

- AWOL, 29 July 2008 – 30 July 2008 / NIF
- AWOL, 9 September 2008 – 10 September 2008 / NIF
- AWOL, 11 September 2008 – 15 September 2008 NIF
- AWOL, 16 September – 6 January 2009 / Apprehended by Civil Authorities
- CMA, 7 January 2009 – 30 January 2009 / Released from Confinement

j. Behavioral Health Condition(s):

- (1) **Applicant provided:** None
- (2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 293 and DD Form 214.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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 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.

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

(7) 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.)

(8) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as

announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

f. 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.

g. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests an upgrade to honorable.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends good service, including a combat tour, receiving two Purple Hearts, and being promoted to E-5. The applicant did not submit any evidence, other than the applicant's statement, to support the contention of receiving two Purple Hearts and being promoted to E-5. The AMHRR does not show the award of the Purple Heart or the promotion to E-5.

The applicant contends being recommended for a medical board; however, CPT D. H. denied the medical board. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record.

The applicant contends being prescribed several medications and was issued a no PT profile, which included not having to report to duty until 0900, which became an issue with CPT H. The applicant was reported being AWOL, so the applicant went AWOL. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends suffering from TBI. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of TBI diagnosis. The AMHRR does not contain a Mental Status Evaluation. The ARBA sent a letter to the applicant at the address in the application on 21 April 2015 requesting documentation to support a TBI diagnosis but received no response from the applicant.

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 determined that, based on the Board's Medical Advisor's opine, a review of the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation, the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, PTSD. Additionally, the applicant asserts 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 found that, based on the Board's Medical Advisor's opine, the applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is also diagnosed and service connected for PTSD. Service connection establishes that the applicant's PTSD existed during military service. The applicant self-asserts having a TBI at the time of military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration, to include reviewing the Board's Medical Advisor's opine, and determined that the applicant's behavioral health conditions fully mitigate the applicant's misconduct. Given the nexus between PTSD, Depression, and avoidance, the applicant's AWOLs are mitigated. In addition, there is a nexus between PTSD and difficulty with authority, so the applicant's PTSD mitigates the disrespect. The applicant also self-asserts a TBI. There is evidence that the applicant was involved in an IED blast in July 2007, but no medical evidence to corroborate the applicant's asserted TBI. However, the applicant's asserted TBI is inconsequential to the case given the full mitigation for PTSD and Depression.

(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 and Depression outweighed the applicant's offenses of AWOL and Disrespect toward an NCO.

b. Response to Contention(s):

(1) The applicant contends suffering from TBI. The Board liberally considered this contention. While there was insufficient medical evidence to support the applicant's Traumatic Brain Injury, the Board was able to determine that the applicant's Post Traumatic Stress Disorder and Depression outweighed the applicant's Disrespect toward an NCO and AWOL offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour, receiving two Purple Hearts and being promoted to E-5. The Board considered this contention during proceedings, but ultimately did not address the contention due to a full upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of AWOL and Disrespect toward an NCO.

(3) The applicant contends being recommended for a medical board; however, CPT H. denied the medical board. The Board considered this contention during proceedings, but ultimately did not address the contention due to a full upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of AWOL and Disrespect toward an NCO.

(4) The applicant contends being prescribed several medications and was issued a no PT profile, which included not having to report to duty until 0900, which became an issue with CPT H. The applicant was reported being AWOL, so the applicant went AWOL. The Board considered this contention during proceedings, but ultimately did not address the contention due to a full upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of AWOL and Disrespect toward an NCO.

c. The Board determined the discharge is inequitable based on the applicant's the Board determined that the applicant's Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of AWOL and Disrespect toward an NCO. 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 and Depression outweighed the applicant's Disrespect toward an NCO and AWOL offenses. 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 due to continuing service connected BH issues requiring review prior to any reentry into military service.

10. BOARD ACTION DIRECTED:

a. **Issue a New DD-214:** Yes

b. **Change Characterization to:** Honorable

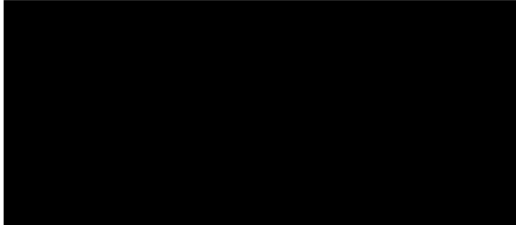
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001349

- 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:

5/24/2024



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