

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, having no support from the chain of command (being ignored, brushed off, or told, "there is nothing wrong with you") when trying to seek help. The applicant contends being denied access to appointments and that their direct line supervisor threatened their life. The applicant contends these are the reasons for their discharge.

b. **Board Type and Decision:** In a records review conducted on 4 January 2023, 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 / Honorable

b. **Date of Discharge:** 19 May 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 13 November 2008, the commander received notice from APG CID the applicant was the subject of investigation into alleged sexual assault and sodomy on PVT C., Company, 16th OD BN. After advising the applicant of their rights, which the applicant waived, the applicant proceeded to inform the First Sergeant, SGT K., and the commander they did have sexual relations with PVT W., yet the relations were consensual. In the final CID Report received on 12 January 2009, both the applicant and PVT W. admitted to having a relationship involving sexual contact, with no clear evidence of the applicant's most recent contact being coerced. This is in violation of AR 600-20 in which "Any relationship between permanent party personnel and initial entry training (IET) trainees not required by the training mission is prohibited. This prohibition applies to permanent party personnel without regard to the installation of assignment of the permanent party member or the trainee".

On 1 April 2008, the applicant was given a company grade Article 15 for insubordinate conduct towards a non-commissioned officer by failing to secure TA-50, and not completing corrective

training for another incident. Included in the Article 15 was a charge of failing to report to PT formation at 0630 on 11 October 2007. The applicant was punished with 14 days extra duty and 14 days restriction with reduction in rank suspended 180 days.

On 20 May the applicant was again insubordinate to a non-commissioned officer, resulting in a vacation of their suspended punishment and a reduction in rank to E-1. A bar to re-enlistment was also initiated against the applicant on 17 July 2008, for their continued misconduct. The applicant has shown enough improvement during their first 90-day review of their bar to re-enlistment which the commander recommended the bar be removed. Three weeks later the commander received notice of the CID investigation mentioned above.

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

(4) Legal Consultation Date: 10 March 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 21 April 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 August 2005 / 4 years, 25 weeks

b. Age at Enlistment / Education / GT Score:

c. Highest Grade Achieved / MOS / Total Service: E-2 / 63B10, Wheeled Vehicle Mechanic / 3 years, 9 months, 9 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: NDSM, GWOTSM, KDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 1 April 2008, for on or about 17 March 2008, disobey a lawful order. On or about 9 October 2007, disobey a lawful order. On or about 11 October 2007, absent oneself from appointed place of duty at which the applicant was required to be, to wit: 0630 PT Formation. The punishment consisted of a reduction to E-1; (suspended); and extra duty and restriction for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 17 July 2008, reflects the suspended portion of the punishment imposed on 1 April 2008, was vacated for: On or about 20 May 2008, were disrespectful in deportment towards SGT J., a noncommissioned officer, then known by the applicant who was then in the execution of their office, by saying to them in a disrespectful manner "Jesus Christ," or words to that affect, when told to get of their cell phone.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 6 February 2009, 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 cleared for any administrative actions deemed appropriate by command. The applicant was diagnosed with: Major Depression. It was the professional opinion of the provider the applicant may respond to command efforts at rehabilitation (such as transfer, disciplinary action, or reclassification), or to any behavioral health treatment methods currently available in any military behavioral health facility.

Report of Medical Examination, 6 February 2009, the examining medical physician noted in the comments section: Major depression.

5. APPLICANT-PROVIDED EVIDENCE: Online application; 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 635-200 (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) 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.

(4) 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.

(5) 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 having no support from the chain of command; and was ignored, brushed off, or told, "there is nothing wrong with you" when trying to seek help. The applicant states being denied access to appointments and their direct line supervisor threatened their life. The applicant contends these are the reasons for their discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Report of Behavioral Health Evaluation (BHE), 6 February 2009, reflecting 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 cleared for any administrative actions deemed appropriate by command. The applicant was diagnosed with: Major Depression. Also, a Report of Medical Examination, 6 February 2009, the examining medical physician noted in the comments section: Major depression. The mental status report and medical examination were considered by the separation authority. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statement provided with the application reflect the applicant is living in a transitional housing program for homeless veteran and doing their best in a tough situation.

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, Depression, Dysthymic Disorder, and Mood Disorder.

(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, Depression, and Dysthymic Disorder. The VA has also service connected the applicant for a Mood Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, Depression, and Dysthymic Disorder. The VA has also service connected the applicant for a Mood Disorder. Given the nexus between Depression, avoidance, and decreased motivation, failing to report to PT is mitigated. However, there is no natural sequela between an Adjustment Disorder, Depression, Dysthymic Disorder, or Mood Disorder and any of the other misconduct to include an inappropriate sexual relationship, insubordination, or not completing a corrective training, so this misconduct is not mitigated.

(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, Depression, Dysthymic Disorder, and Mood Disorder outweighed the medically unmitigated offenses (inappropriate sexual relationship, insubordination, or not completing a corrective training).

b. Response to Contention(s): The applicant contends having no support from the chain of command (being ignored, brushed off, or told, "there is nothing wrong with you") when trying to seek help. The applicant states being denied access to appointments and claims their direct line supervisor threatened their life. The applicant contends these are the reasons for the discharge. The Board considered this contention but found insufficient information in the applicant's AMHRR or applicant-provided evidence to support further upgrade beyond the honorable characterization of service granted previously by the Army Discharge Review Board. The Board liberally considered the applicant's behavioral health conditions at the time of the pattern of misconduct but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, and Mood Disorder outweighed the medically unmitigated offenses (inappropriate sexual relationship, insubordination, and not completing a corrective training). There was no indication/documentation in the evidentiary record to support unproductive or malignant intent/actions by the command. Therefore, changes to the narrative reason for separation and reenlistment code are not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address issues before a 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001408

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB upgraded the discharge characterization to Honorable. Therefore, no further relief is available.

(2) The Board found insufficient mitigating factors to warrant a change to the applicant's narrative reason for separation. The reason the applicant was discharged was both proper and equitable based on the basis of separation misconduct.

(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:

3/13/2024

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