

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:**

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

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

The applicant seeks relief contending, in effect, being charged with threatening a civilian; however, it was proven to be a false charge; the case was re-opened therefore putting it under the "double jeopardy" rule. The applicant believes this was done unfairly and the decision has affected the applicant's ability to continue to go to college.

b. **Board Type and Decision:** In a records review conducted on 28 November 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:** Misconduct (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 2 April 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 17 September 2013

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

Being disrespectful to SGT L. on or about 3 May 2011 and on or about 19 April 2011;

Disobeyed SGT B. on or about 3 May 2011;

Disrespectful to 1SG F. on or about 15 February 2011;

Disobeyed CPT R. on or about 27 February 2011;

Disrespectful to SGT B. on or about 24 July 2012;

Failed to report to the company on or about 15 November 2012;

Failed to report to an appointment on or about 21 and 29 January and 15 March 2013;

Disrespectful to SFC P. on or about 4 March 2013; and,

Wrongfully communicate to D. B a threat on or about 24 June 2013.

(3) Recommended Characterization: The Company Commander recommended Under Other Than Honorable Conditions; however, the Battalion and Brigade Commander recommended General (Under Honorable Conditions).

(4) Legal Consultation Date: 17 September 2013

(5) Administrative Separation Board: On 25 November 2013, the applicant was notified to appear before an administrative separation board and advised of rights. On 13 December 2013, the administrative separation board convened, and the applicant appeared with counsel. The Board determined seven of fourteen reasons were not supported by a preponderance of the evidence. The notification memorandum only listed nine reasons. The board found the following reasons listed were supported by a preponderance of the evidence: Disrespecting 1SG F. on 15 February 2011; disobeyed CPT R. on 27 February 2011; failed to report to accountability formation on 15 November 2012; failed to report to dental appointment on 21 January 2013; disobeyed a no contact order on 28 January 2013; failed to follow proper procedures on 22 February 2013; disrespected SFC P. in language and deportment on 4 March 2013. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

On 14 March 2014, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 14 March 2014 / General (Under Honorable Conditions) / The Separation Authority Approved the findings and recommendations of the administrative separation board under the provisions of AR 635-200 Chapter 14, Paragraph 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 5 August 2010 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 23 / High School Graduate / 125
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12V10, Concrete and Asphalt Equipment Operator / 8 years, 10 months, 2 days
- d. **Prior Service / Characterizations:** USAR, 31 May 2005 – 4 August 2010 / NA
IADT, 5 July 2005 – 8 April 2006 / HD
(Concurrent Service)
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** ARCOM, AAM-2, NDSM, GWOTSM, NCOPDR, ASR
- g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 28 June 2011, for being disrespectful in language toward SGT L. on or about 3 May 2011; disobey a lawful order from SGT B. on or about 3 May 2011; being disrespectful in deportment toward SGT L. on or about 10 April 2011; and being disrespectful in language toward SGT L. on or about 10 April 2011. The punishment consisted of a reduction to E-2, suspended for 180 days; and extra duty for 14 days.

CG Article 15, 24 April 2013, for failing to go at the time prescribed to the appointed place of duty on or about 15 March 2013; being disrespectful in language toward SFC P. on or about 4 March 2013; and being disrespectful in deportment toward SFC P. on or about 4 March 2013. The punishment consisted of a reduction to E-3, suspended, extra duty and restriction for 14 days, suspended; and, oral reprimand. The applicant appealed the decision resulting in a not guilty finding for specifications one and three with no change in punishment.

Report of Mental Status Evaluation, 25 July 2013, 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 had been screened for PTSD and mTBI with negative results. It was noted: The applicant appears to be a good candidate for rehabilitation and may benefit from Rehab Transfer where a fresh start could occur.

Several 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 Medical Assessment, 19 July 2013, the health care provider noted in the comments section: Adjustment D/O.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Attorney Statement with listed enclosures 1 through 11; 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 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, Misconduct (Minor Infractions).

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 contends being charged with threatening a civilian; however, it was proven to be a false charge; the case was re-opened therefore putting it under the "double jeopardy" rule. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR reflects, the Board determined the allegation the applicant conveyed a threat to D. B on 30 July 2013, was not supported by preponderance of the evidence. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 third-party statements provided with the application reflect the applicant's good conduct while serving in the Army.

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? **No.** The Board determined that, a previous board upgraded the applicant's characterization of service to honorable and changed the narrative reason to "Minor Infractions", in part, based on the applicant's in-service behavioral health issues, the applicant received the full relief requested. Therefore, no further relief warranted.

(2) Did the condition exist or experience occur during military service? **N/A.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends being charged with threatening a civilian; however, it was proven to be a false charge; the case was re-opened therefore putting it under the "double jeopardy" rule. The Board considered this contention but ultimately did not address it because the applicant was previously granted the full relief requested - Honorable characterization of service. The previous Board also voted to change the applicant's narrative reason to Misconduct (Minor Infractions) was warranted.

(2) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the applicant's discharge to Character of Honorable. Therefore, no further upgrade is available.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001443

(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:

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