

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge is improper because the applicant was only given two days to get all the applicant's affairs together before being kicked off-post and the applicant was not given transitioning to civilian life training. The applicant chain of command asked the applicant if the applicant wanted to stay or leave the Army. The applicant responded they would like to leave the Army and go to school to find a job better suited for the applicant. The applicant was assured the applicant would receive an honorable discharge. The applicant applied for school but was denied the GI Bill. The applicant would like to go to school to better the lives of the applicant and the applicant's children.

b. **Board Type and Decision:** In a records review conducted on 9 November 2023, and by a 5-0 vote, the Board determined that the applicant's MDD and insomnia outweighed the multiple FTRs and disrespect to an NCO and the applicant's MST outweighed the applicant's remaining medically unmitigated misconduct of making false official statements. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of the applicant's behavioral health condition warranting consideration prior to reentry of military service.

*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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 31 July 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 June 2013

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

On 23 March 2012, the applicant received a Company Grade Article 15 from the previous commander of HHC, 593rd. The misconduct consisted of on two occasions failing to report to the appointed place of duty and disrespecting a noncommissioned officer (NCO).

On 11 June 2013, the commander adjudicated a second Company Grade Article 15 for the applicant. The misconduct consisted of multiple instances of failing to report to the appointed place of duty and making two false official statements.

The applicant had ample opportunity to modify the applicant's behavior to comport with Army standards and failed to do so. This failure to comply occurred through several changes of leadership.

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

**(4) Legal Consultation Date:** 24 June 2013

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 15 July 2013 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 15 November 2010 / 4 years

**b. Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 25F10, Net Switching Systems Operator – Maintainer / 2 years, 8 months, 16 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Company Grade Article 15, 23 March 2012, for being disrespectful in language toward Sergeant R. C., an NCO (24 January 2012), and on two occasions, failing to go at the time prescribed to the appointed place of duty (16 and 23 February 2012). The punishment consisted of a reduction to E-2 and extra duty for 14 days.

Company Grade Article 15, 5 June 2013, for on four occasions, failing to go at the time prescribed to the appointed place of duty (25 January, 13 February, and 2 and 16 April 2013), and on two occasions, making false official statements (26 and 27 February 2013). The punishment consisted of a reduction to E-1; forfeiture of \$353 pay (suspended); extra duty for 14 days; and restriction for 14 days (suspended).

Numerous Developmental Counseling Forms, for but not limited to:

Being late formation on multiple occasions,  
Missing an appointment,  
Lying to an NCO,  
Failing to be in the correct uniform,  
Insubordinate conduct toward an NCO,

Failing to obey orders, and  
Pending separation under AR 635-200, Chapter 14

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Medical History, 15 May 2015, the examining medical physician noted in the comments section: Relates history of sleep issues and history of depression.

Report of Mental Status Evaluation, 6 June 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 post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI) with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Depression.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293.

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) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a

member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

(7) 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.

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 contends being assured the applicant would receive an honorable discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR reflects the applicant acknowledged receipt of the notification for separation with the commander's recommendation for a general (under honorable conditions) characterization of service.

The applicant contends being discharged before receiving training on transitioning to a civilian. 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 applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

#### 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Major Depressive Disorder (MDD), Anxiety Disorder, and PTSD associated with MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant MDD, Anxiety Disorder, and PTSD/MST existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that applicant's MDD mitigates the applicant's multiple FTR offenses and disrespect offense as there is an association between MDD and decreased motivation, lethargy, problems with memory and concentration, and irritability. However, the applicant's MDD, PTSD, and Anxiety Disorder do not mitigate the applicant's official false statement offense as there is no association between the applicant's conditions and this offense because none of the conditions would have rendered the applicant unable to differentiate between right and wrong and adhere to the right.

(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 MDD and insomnia outweighed the multiple FTRs and disrespect to an NCO; however, the applicant's MDD, Anxiety Disorder, and PTSD did not outweigh the applicant's multiple false official statements. The Board determined that the applicant's MST outweighed the applicant's remaining medically unmitigated misconduct of making false official statements warranting a discharge upgrade.

b. Response to Contention(s):

(1) The applicant contends being assured the applicant would receive an honorable discharge. The Board considered this contention during proceedings, but ultimately did not address the contention based applicant's behavioral health conditions medically mitigating the applicant's FTR and disrespect offenses and the applicant's MST outweighing the applicant's medically unmitigated misconduct of making false official statements warranting a discharge upgrade to Honorable with a narrative reason change to "Secretarial Authority".

(2) The applicant contends being discharged before receiving training on transitioning to a civilian. The Board considered this contention during proceedings, but ultimately did not

address the contention based applicant's behavioral health conditions medically mitigating the applicant's FTR and disrespect offenses and the applicant's MST outweighing the applicant's medically unmitigated misconduct of making false official statements warranting a discharge upgrade to Honorable with a narrative reason change to "Secretarial Authority".

(3) 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.

(4) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined the discharge is inequitable based on the applicant's MDD and insomnia outweighing the multiple FTRs and disrespect to an NCO and the applicant's MST outweighing the applicant's remaining medically unmitigated misconduct of making false official statements. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD associated with MST diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further 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 voted to change the applicant's characterization of service to Honorable because the applicant's MDD and insomnia outweighed the multiple FTRs and disrespect to an NCO and the applicant's MST outweighed the applicant's remaining medically unmitigated misconduct of making false official statements. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted not to change the reentry eligibility (RE) code due to applicant's PTSD associated with MST diagnosis warranting consideration prior to reentry of military service.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214:** Yes
- b. Change Characterization to:** Honorable
- c. Change Reason / SPD Code to:** Secretarial Authority / JFF

d. Change RE Code to: No Change

e. Change Authority to: AR 635-200, Chapter 15

**Authenticating Official:**

