

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. The applicant requests an upgrade to General.

The applicant seeks relief contending, in effect, PTSD and other diagnosed behavioral health conditions are affecting the applicant's life. The applicant states having to be hospitalized every year and being unable to carry on a normal life. The applicant cannot afford medication or counseling and has turned to substance abuse.

b. **Board Type and Decision:** In a records review conducted on 28 November 2023, and by a 3-2 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service, to include combat service, and the severity of the applicant's post-service behavioral health conditions. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable. 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)

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:** 14 June 2005

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 7 February 2005, the applicant was charged with:

Charge I: Violating Article 121, UCMJ, for

Specification 1: between on or about 1 July 2003, and on or about 31 July 2004, steal eight radio-mobile portable remote (RPR) model number PK3GTX, serial number: CIPB005757, military property, of a value more than \$500, the property of the United States Army.

Specification 2: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558737, military property, of a value more than \$500, the property of the United States Army.

Specification 3: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558824, military property, of a value more than \$500, the property of the United States Army.

Specification 4: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558730, military property, of a value more than \$500, the property of the United States Army.

Specification 5: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558815, military property, of a value more than \$500, the property of the United States Army.

Specification 6: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558828, military property, of a value more than \$500, the property of the United States Army.

Specification 7: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: 558829, military property, of a value more than \$500, the property of the United States Army.

Specification 8: between on or about 1 July 2003, and on or about 31 July 2004, steal a radio-mobile portable remote (RPR) model number PK3GTX, serial number: CIPB005762, military property, of a value more than \$500, the property of the United States Army.

Specification 9: between on or about 1 July 2003, and on or about 31 July 2004, steal a lap top computer (Transport), serial number 3160711-0001, military property, of a value more than \$500, the property of the United States Army.

Charge II: Violating Article 128, UCMJ, for:

Specification 1: on or about 2 October 2004, unlawfully strike Specialist (E4) O., on their face with a closed fist.

Specification 2: on or about 2 October 2004, unlawfully strike Specialist (E4) T., on their arm with a closed fist.

(2) Legal Consultation Date: 2 June 2005

(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: 8 June 2005 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 September 2002 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 100

c. Highest Grade Achieved / MOS / Total Service: E-3 / 25U10, Signal Support System Specialist / 2 years, 9 months, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (20 September 2003 – 12 July 2004)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

Military Police Report, 3 October 2004, reflects the applicant was apprehended for: Simple Assault.

CID Report of Investigation - Initial Final, 19 January 2005, reflects an investigation established probable cause to believe the applicant committed the offense of Larceny of Government Property when, while the applicant was deployed in support of Operation Iraqi Freedom, the applicant stole eight Radio-Mobile Portable Remote (RPR) and one Laptop computer, all government property.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The Mississippi State Hospital Diagnostic Discharge Summary, 25 June 2014, reflects a provisional diagnosis of: Axis I: PTSD; Axis II: Antisocial personality disorder; Axis IV: Family discord, Severity Moderate.

(2) AMHRR Listed: A letter submitted by Doctor S., a psychiatrist, 9 December 2004, reflects the applicant was referred to the Department of Behavioral Health for a Command Directed Mental Status Examination, pursuant to chapter proceedings under section 14-12. The letter reflects the applicant had the capacity to understand and participate in the proceedings and was mentally responsible. The applicant was diagnosed with Axis I: E/F Generalized Anxiety Disorder. It was noted, the evaluation did not reveal any psychiatric conditions or symptoms which would have impaired the applicant's ability to participate in the above-mentioned proceedings. However, based on the applicant's report of symptoms of irritability, disturbed sleep, and increased reactivity, the applicant likely had experienced a mild variant of a combat stress presentation. The service member was not considered imminently dangerous based on self-report.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; letter of support; medical records.

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.

(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) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

d. 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.

e. 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 General.

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 suffering from PTSD. The applicant provided a Mississippi State Hospital Diagnostic Discharge Summary, 25 June 2014, reflecting the applicant was diagnosed with Axis I: PTSD; Axis II: Antisocial personality disorder; Axis IV: Family discord, Severity Moderate. Also, the AMHRR includes a letter submitted by Doctor S., a psychiatrist, 9 December 2004, reflecting the applicant was referred to the Department of Behavioral Health for a Command Directed Mental Status Examination, pursuant to chapter proceedings under section 14-12. The applicant had the capacity to understand and participate in the proceedings and was mentally responsible. The applicant was diagnosed with Axis I: E/F Generalized Anxiety Disorder. The metal status examination 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.

The third-party statement provided with the application reflects on the applicant's issues and the need for help from the VA.

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: Schizoaffective Disorder, Bipolar Disorder, Intermittent Explosive Disorder, Post Traumatic Stress Disorder, and Generalized Anxiety Disorder (GAD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicants diagnoses/experiences: Schizoaffective Disorder, Bipolar Disorder, Intermittent Explosive Disorder, Post Traumatic Stress Disorder, and Generalized Anxiety Disorder (GAD) existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's misconduct, characterized by multiple instances of larceny and assault, was not a normal sequela of GAD and thus not mitigated by the disorder. Regarding the potential impacts of Schizoaffective Disorder and Bipolar Disorder, there is no evidence in the record that the applicant was experiencing these conditions at the time of the misconduct that would mitigate the behavior, and rather the applicant's statements provided clear and coherent justification for the misconduct. The applicant was diagnosed with PTSD, however the applicant's misconduct is not mitigated because the larceny and assault are not normal sequela of PTSD.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Schizoaffective Disorder, Bipolar Disorder, Intermittent Explosive Disorder, Post Traumatic Stress Disorder, and Generalized Anxiety Disorder outweighed the applicant's medically unmitigated larceny and assault offenses.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Schizoaffective Disorder, Bipolar Disorder, Intermittent Explosive Disorder, Post Traumatic Stress Disorder, and Generalized Anxiety Disorder outweighed the applicant's medically unmitigated larceny and assault offenses. However, the Board did find that an upgrade to a character of General is warranted based on the applicant's length of service, to include combat service, and in compassion for the severity of the applicant's behavioral health conditions.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. 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 characterization of service was inequitable based on the applicant's length of service, to include combat service, and in compassion for the severity of the applicant's behavioral health conditions. 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, and the compassion for the severity of the applicant's behavioral health conditions partially outweighed the applicant's misconduct. The applicant's conduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001471

(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.

(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: Yes
- b. Change Characterization to: General
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:



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