

1. Applicant's Name:

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

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 a narrative reason change to "Secretarial Authority" or "Completion of Active Duty" and a reentry eligibility (RE) code change to RE-1.

The applicant seeks relief contending that the separation process was flawed, making the discharge improper and inequitable. The applicant argues that the finding that the misconduct was unrelated to PTSD was incorrect, also making the discharge improper and inequitable. The applicant contends that the discharge was too harsh considering the applicant's service record and post-service accomplishments.

b. Board Type and Decision: In a records review conducted on 16 November 2023, and by a 5-0 vote, the Board denied the request for a narrative reason change 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: 8 April 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 28 November 2012

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant unlawfully struck Specialist D. in the head and on the shoulder with their fist, and verbally communicated a threat to Private First-Class C.

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

(4) Legal Consultation Date: 28 November 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 February 2013 / General (Under Honorable Conditions) / The separation authority found in accordance with AR 635-200, paragraph 1-33(c), the disability was not the cause, or substantial contributing cause, of the misconduct and no other circumstances warranted disability processing instead of alternate administrative separation. The separation authority directed the case not be processed through medical disability channels.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 December 2010 / 2 years

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 118

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1V, Infantryman / 6 years, 2 months, 8 days

d. Prior Service / Characterizations: RA, 16 August 2007 – 16 December 2010 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Afghanistan (25 February 2009 – 28 February 2010)

f. Awards and Decorations: ARCOM, AGCM, NDSM, ACM-2CS, GWOTSM, NCOPDR, ASR, OSR-2, NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Report of Mental Status Evaluation, 3 May 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in the administrative proceedings and could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with positive results. The command was advised to consider the influence of these conditions. Axis I: Deferred, the applicant required further assessment before a determination could be made. The applicant could participate in PT as allowed by physical profile, as exercise often improves mood. The applicant was not using any substance. The applicant was seen for their Chapter 14-12c mental status evaluation. The applicant was polite and cooperative for the duration of the interview. The applicant indicated an understanding of the reason for the chapter and the chapter process. A review of the medical records was conducted, and behavioral health concerns were noted. Symptom endorsement in the interview confirmed ongoing behavioral health concerns. As a result, the applicant was referred for more evaluation. Based on the information provided, the applicant was not cleared by Fort Richardson Behavioral Health Clinic to proceed with the Chapter process.

Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I: Violation of the UCMJ, Article 128.

Specification 1: On or about 3 December 2011, unlawfully strike SPC L. in the head with their fist. Plea: Not Guilty, Finding: Not Guilty

Specification 2: On or about 16 April 2012, unlawfully strike SPC L. in the head with their first Plea: Guilty, Finding: Guilty

Charge II: Violation of the UCMJ, Article 134: Specification: On or about 12 March 2012, wrongfully communicate to PFC C. a threat, to wit: "I'm killing everyone that was in that cabin that night," or words to that effect, and under the circumstances, this conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. Plea: Guilty, Finding: Guilty

The sentence adjudged: Forfeiture of two-thirds of one month pay, reduction to E-2, and confinement for 15 days.

i. Lost Time / Mode of Return: 19 days (CMA, 8 August 2012 – 27 August 2012 / Released from Confinement)

j. Behavioral Health Condition(s):

(1) Applicant provided: Memorandum Medical Evaluation Board Referral Details, 19 July 2012, reflects the applicant was diagnosed with Post-traumatic Stress Disorder (PTSD) on 19 December 2011. However, symptom endorsement of PTSD symptoms to include hypervigilance, hyper startle response, disrupted sleep, and high levels of irritability date back to the applicant's mid-tour leave during deployment. On 18 June 2012, a Temporary Profile was issued along with a referral for a Medical Evaluation Board (MEB). It was determined the applicant met criteria for referral to an MEB IAW AR 40- 501, Chapter 3-33 based on their deployment related PTSD symptoms, which the applicant reported having been in existence since their deployment.

DA Form 3947, Medical Evaluation Board Proceeding, 27 December 2012, reflects the applicant was diagnosed with PTSD and did not meet retention standards.

Medical Progress notes, 31 December 2014, reflects the applicant developed post-traumatic stress disorder from their combat experiences in Afghanistan and PTSD did influence the applicant including the unfortunate aggressiveness which resulted in the applicant's disciplinary actions and their general discharge.

Department of Veterans Affairs Disability Evaluation System Proposed Rating, 27 February 2013, reflects the applicant received a proposed disability for PTSD and TBI with a 50 percent evaluation and 70 percent overall.

(2) AMHRR Listed: Memorandum Medical Evaluation Board Referral Details and DA Form 3947, Medical Evaluation Board Proceeding, as described in previous paragraph 4j(1).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; legal brief with all listed enclosures 1 through 21.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has pursued a college education and is enrolled at the Massachusetts Maritime Academy. The applicant sought and engaged in treatment for the applicant's mental health conditions.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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 applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs to be changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 14, paragraph 14-12a, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Minor Infractions)," and the separation code is "JKN." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends suffering from PTSD. The applicant provided a Memorandum Medical Evaluation Board Referral Details, 19 July 2012, reflecting the applicant was diagnosed with Post-traumatic Stress Disorder (PTSD) on 19 December 2011. Also, Medical Evaluation Board Proceeding, 27 December 2012, reflects the applicant was diagnosed with PTSD and did not meet retention standards. Medical Progress notes, 31 December 2014, reflect the applicant developed post-traumatic stress disorder from their combat experiences in Afghanistan and PTSD did influence the applicant, including the aggressiveness which resulted in the applicant's disciplinary actions and their general discharge. The AMHRR reflects the separation authority, based on the Command Surgeon opine, found in accordance with AR 635-200, paragraph 1-33(c), the disability was not the cause, or substantial contributing cause, of the misconduct and no other circumstances warranted disability processing instead of alternate administrative separation. The separation authority directed the case not be processed through medical disability channels. The AMHRR includes a Report of Mental Status Evaluation, 3 May 2012, reflecting 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 positive results. The applicant's diagnosis was deferred for further assessment before a determination could be made.

The applicant desires to rejoin the military. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The third-party statements provided with the application speak highly of the applicant and recognize the applicant's good conduct before, during, and after leaving 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? **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, PTSD, Anxiety, Depression, and Traumatic Brain Injury (TBI).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant's PTSD, TBI, Anxiety, Depression, and an Adjustment Disorder existed during the applicant's military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD, TBI, Anxiety, Depression, and an Adjustment Disorder do not mitigate the applicant's offenses of assault or communicating a threat. There is no natural sequela between any of these BH conditions and assault or communicating a threat. Further, the applicant's official record includes a Command Surgeon memorandum that reflects that the applicant's medical conditions were not the direct or substantial cause of the misconduct that led to the separation. While the Board considered the medical opine provided by the applicant's post-service VA provider, the Board found the Command Surgeon's medical opine more credible because the opine was based on an evaluation of the applicant at the time of the misconduct.

(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, PTSD, Anxiety, Depression, and TBI outweighed the medically unmitigated offenses of assault and communicating a threat.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, Anxiety, Depression, and TBI outweighed the medically unmitigated offenses of assault and communicating a threat. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed to Secretarial Authority or Completion of Active Duty. The Board considered this contention but found no mitigating factors that outweighed the applicant's offenses of assault and communicating a threat. Accordingly, the Misconduct (Minor Infractions) narrative reason for discharge is proper and equitable.

(3) The applicant contends good service, including a combat tour. The Board considered this contention and closely reviewed the totality of the evidentiary record, determining that a narrative reason change is not warranted. The applicant's awards, overseas tours, and post-service accomplishments do not outweigh the applicant's medically unmitigated offenses of assault and communicating a threat.

(4) The applicant contends that the discharge was improper and inequitable because the reasons provided for administrative separation in the separation packet varied, in violation of AR 635-200, Chapter 2-2a, depriving the applicant the ability to defend against the action. The applicant further contends that the Separation Authority's approval cited the wrong regulation as the grounds for separation (illegal drug use) which the applicant's record does not include, resulting in the possibility that the Separation Authority misunderstood the basis for the

separation and improperly approved the action. Further, the applicant contends that the requirement under Chapter 14-2a to attempt to rehabilitate a Soldier was not followed. The Board considered these contentions and determined a discharge upgrade is not warranted as the applicant's record reflects that the applicant was on notice of the reasons for separation and had the opportunity to defend against the separation action given the applicant was represented by TDS counsel as evidenced by the applicant's election of rights memorandum, the Separation Authority's memorandum directing discharge, and the applicant's request for separation through medical channels. Finally, the Board determined that the applicant was not entitled to the rehabilitation requirement of Chapter 14-2a as the applicant's original narrative reason, prior to a previous ADRB upgrade, was in accordance with AR 635-200, paragraph 14-12c which does not require rehabilitative efforts. Therefore, the applicant's narrative reason is proper and equitable.

(5) The applicant contends that the discharge was improper and inequitable because the determination that the applicant's misconduct was unrelated to PTSD and TBI was incorrect, rendering a result of a GD improper and inequitable. Further, the applicant contends that the commanding officer and command surgeon concluded that the applicant's diagnosed PTSD and TBI were not a direct or substantial cause of the misconduct that triggered administrative separation because that conclusion contradicts contemporary medical evidence and an expert psychologist opine that the conduct leading to discharge was caused by the applicant's mental-health conditions. The Board considered this contention and determined that a narrative reason change is not warranted. The Board considered the medical opine provided by the applicant's post-service VA provider but found the Command Surgeon's medical opine more credible because it was based on an evaluation of the applicant at the time of the misconduct. Therefore, no change is warranted.

(6) The applicant contends that the discharge is inequitable because the Army has previously granted upgrades to General where the Soldier's combat and overall military service outweigh the harm of the conduct leading to the discharge. The applicant cites AR20130016508; AR20140007232; AR20140006079; and AR21040002496. The applicant contends the logic applies to the applicant's case because the applicant's misconduct is connected to the applicant's then-untreated, deployment related PTSD and TBI. The applicant holds an honorable discharge characterization based on a previous Board's decision, so upgrades to a General characterization are no longer applicable. The narrative reason (Misconduct (Minor Infractions)) is proper and equitable based on the medically unmitigated misconduct (assault and communicating a threat).

(7) The applicant contends that the applicant's discharge is inequitable and too harsh based on the applicant's service and post-service accomplishments (including many supervisors' testimony related to the applicant's excellent qualities as a Soldier and the applicant's excelling as a sophomore at the Massachusetts Maritime Academy). The Board considered this contention and acknowledged the post-service accomplishments. However, the accomplishments did not rise to a level warranting a narrative reason change given the unmitigated misconduct (assault and communicating a threat).

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may request a personal appearance to present 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

AR20210001473

d. Rationale for Decision:

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

(2) The Board voted not to change the applicant's reason for discharge or the accompanying SPD code. The applicant's Misconduct (Minor Infractions) reason is both proper and equitable as the applicant offenses of assault and communicating a threat were not medically mitigated and the totality of the applicant's record does not warrant a change.

(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:

3/8/2024

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