

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

a. Applicant's Requests and Issues: The current characterization of service for the under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, military service has been an important aspect of their life and a steppingstone to a better life. The uncontrollable circumstances, which led to the discharge occurred unexpectedly because the applicant had never been in any trouble. Since then, the applicant has grown. The applicant states, in Alaska and being away from the family support, the applicant was under the stress of an impending divorce. During the separation proceedings, most of the unit was deployed to the Philippines, and the Officer and NCO support channel, whom the applicant had built professional rapport with, were not available to speak on behalf of the applicant. The discharge process was conducted incorrectly and there were no rehabilitation efforts, no pattern of misconduct was established, and the out-processing was expedited; the applicant was not permitted to seek mental health or religious comfort. The applicant has since evolved emotionally and professionally by completing several academic and professional development programs. The applicant took the MLK/Gandhi nonviolence pledge; initiated a tie drive for children; held workshops teaching students how to dress appropriately for interviews; and earned a Bachelor of Science degree in Sociology. An upgrade would allow the applicant to pursue a master's degree in education while making the country, community, and children proud.

b. Board Type and Decision: In a records review conducted on 31 October 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 6 April 2010

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 11 March 2010

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was arrested for assault on 1 January 2010, and the applicant was also arrested for a physical altercation at the Arctic Chill on 6 March 2010.

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

(4) Legal Consultation Date: 15 March 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 September 2008 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / GED / 102

c. Highest Grade Achieved / MOS / Total Service: E-3 / 12W10, Carpentry and Masonry Specialist / 1 year, 9 months, 28 days

d. Prior Service / Characterizations: DEP, 9 June 2008 – 3 September 2008 / NA

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Three Developmental Counseling Forms for terms of imposed bail and unit terms with no-contact with W.; Incident at an on-post bar; and being denied leave for a divorce hearing.

District/Superior Court for the State of Alaska Criminal Log Report, 8 January 2010, reflects charges: I – Assault, 2nd degree; II – Assault, 4th degree; III – Interfere with report (DV); IV – Assault 4th degree; V – “Interfere with report (DV); cash bail of \$750 was set; conditions of release was to obey all laws, attend all hearings; and pre-indictment was scheduled for 26 January 2010. The military supervisors and victim were present.

Partial Military Police Report with sworn statements, 7 March 2010, reflects the applicant was apprehended for striking another Soldier, SPC L., in the face with a beer bottle.

Memorandum for Commander, 10 March 2010, rendered by a USAR Psychologist and clinical director, recommended the chain of command to allow the applicant to speak with a chaplain, the IG, and TDS, if requested by the applicant.

Memorandum for Commander, 15 March 2010, rendered by a defense counsel representing the applicant, indicates rehabilitative efforts have not been made according to AR 635-200, paragraph 1-16; there were no counseling statements establishing a pattern of misconduct; there was no evidence of any rehabilitation transfer; and the accusation for the applicant's arrest had not been adjudicated to show its truth.

Report of Behavioral Health Evaluation (BHE), 15 March 2010, reflects the applicant was mentally responsible with a clear-thinking process; had the mental capacity to understand and participate in the proceedings; and met the retention requirements of AR 40-501, Chapter 3. The applicant was psychiatrically cleared for any administrative actions deemed appropriate by

command. The applicant showed no evidence of mental disorder. The BHE was considered by the separation authority.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Medical History, 10 March 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: The applicant was referred to Behavioral Health Services for mild clinical depression.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; cover letter; DD Form 214; 13 third-party statements; Pledge of Nonviolence; six certificates of training/programs; three certificates of recognition; certificate of achievement; case separation documents; and enlistment documents.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has completed several academic and professional development programs. The applicant took the MLK/Gandhi nonviolence pledge; initiated a tie drive for children; held workshops teaching students how to dress appropriately for interviews; and earned a Bachelor of Science degree in Sociology.

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.

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 the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." 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 stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant desires to rejoin the Military Service. 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 applicant's AMHRR contains documentation which indicates the applicant was referred to the behavioral health services for a mild clinical depression. The record shows the applicant underwent a behavioral health evaluation (BHE) on 15 March 2010, which indicates the

applicant was mentally responsible with clear-thinking process, and there was no evidence of mental disorder. The BHE was considered by the separation authority.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends family issues, (separated from family support and an impending divorce), affected behavior and ultimately led to the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends the discharge process was conducted incorrectly; there were no rehabilitation efforts; no pattern of misconduct was established; the out-processing was expedited; and the applicant was not permitted to seek mental health or religious comfort. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends having completed several academic and professional development programs; taking the MLK/Gandhi nonviolence pledge; initiating a tie drive for children; holding workshops and teaching students how to dress appropriately for interviews; and earning a Bachelor of Science degree in Sociology. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

The applicant contends an upgrade would allow the applicant to pursue a master's degree in education. Eligibility for veterans' 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 speak highly of the applicant's character and performance, including an interest to rejoin the military, and recognize the applicant's good conduct and achievements 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Major Depressive Disorder, Other Persistent Mood Disorder, Chronic Adjustment Disorder, and Bipolar Disorder. The applicant also asserts MST resulting from sexual harassment.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's Major Depressive Disorder, Other Persistent Mood Disorder, Chronic Adjustment Disorder, Bipolar Disorder, and asserted MST 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 none of the applicant's behavioral health conditions mitigate or excuse the applicant's assault offenses as assault is not natural sequela of Chronic Adjustment Disorder, Other Persistent Mood Disorder, MDD, Bipolar Disorder or MST. The applicant's behavioral health conditions would not render the applicant unable to differentiate between right and wrong and adhere to the right.

(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 Major Depressive Disorder, Other Persistent Mood Disorder, Chronic Adjustment Disorder, Bipolar Disorder, or asserted MST outweighed the applicant's medically unmitigated assault offenses.

b. Response to Contention(s):

(1) The applicant contends that the applicant's discharge is inequitable because the applicant's AMHRR contains documentation which indicating that the applicant was referred to the behavioral health services for a mild clinical depression. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder, Other Persistent Mood Disorder, Chronic Adjustment Disorder, Bipolar Disorder, or asserted Military Sexual Trauma outweighed the applicant's medically unmitigated assault offenses. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant's Pattern of Misconduct narrative reason for separation was proper and equitable given the applicant's medically unmitigated multiple assault offenses.

(3) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to maintain the RE-code at RE-3, which is a waivable 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

(4) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention but determined that the applicant's youth and immaturity did not outweigh the applicant's medically unmitigated assault offenses.

(5) The applicant contends family issues (being away from family support and an impending divorce), affected behavior and ultimately led to the discharge. The Board considered this contention but determined that the applicant's duty station in Alaska and marital difficulties did not outweigh the applicant's medically unmitigated assault offenses as the Army affords many avenues to Soldiers including seeking separation for hardship.

(6) The applicant contends the discharge process was conducted incorrectly; there were no rehabilitation efforts, no pattern of misconduct was established; the out-processing was expedited; and the applicant was not permitted to seek mental health or religious comfort. The Board considered this contention and determined that the Separating Authority waived rehabilitation efforts based on a BH provider opine, dated 15 March 2010, stating that rehabilitation efforts would be ineffective and any omission of documentation related to the rehabilitation waiver was an administrative error. The Board found no evidence to support that the

applicant was not permitted to seek mental health or religious services in the applicant's AMHRR or applicant-provided evidence.

(7) The applicant contends having completed several academic and professional development programs; taking the MLK/Gandhi nonviolence pledge; initiating a tie drive for children; holding workshops teaching students how to dress appropriately for interviews; and earning a Bachelor of Science degree in Sociology. The Board considered the applicant's post-service accomplishments but found that they do not outweigh the applicant's assault offenses.

(8) The applicant contends an upgrade would allow the applicant to pursue a master's degree in education. The Board considered this contention but does not grant relief to gain employment or enhance educational or employment opportunities

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 voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Major Depressive Disorder, Other Persistent Mood Disorder, Chronic Adjustment Disorder, Bipolar Disorder, and asserted MST did not outweigh the applicant's medically unmitigated assault offenses. The Board also considered the applicant's contentions regarding improprieties in the discharge process, family issues, and post-service accomplishments, but found that the totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(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:** 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001484

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