

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 current discharge should be changed to a medical discharge because the reason for the discharge was caused by the applicant suffering from an untreated PTSD and bipolar disorder. According to the records, the applicant was behaving out of fear because of the nervous conditions. The VA has granted a service-connected disability rating of 50 percent for the untreated PTSD, bipolar disorder, and cocaine addiction. According to the VA's rating determination, any inappropriate behavior during and throughout the service and discharge period was directly related to the diagnosed disorders. The applicant was experiencing many stressors and was unable to cope or handle them well. Since the diagnoses and treatments, the applicant has grown more aware of the thoughts and behaviors and is disheartened to know the Army records are still smeared because of the illness, the applicant was unaware of at the time. They could have been avoided.

b. Board Type and Decision: In a records review conducted on 2 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD, Depression and Bipolar Disorder mitigating applicant's AWOL, disobeying a lawful order, and 2x positive UA. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

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 / General (Under Honorable Conditions)

b. Date of Discharge: 6 November 2006**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): NIF

Memorandum, 4 October 2006, rendered by the applicant requesting discharge in lieu of trial by court-martial, indicates the applicant was charged with violating Articles 86, 112a, and 92, UCMJ.

Memorandum for Commander, XVIII Airborne Corps and Fort Bragg, 27 October 2006, rendered by the servicing Staff Judge Advocate (SJA), indicates charges were preferred on

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5 October 2006 for two Specifications of violating Article 86, UCMJ, and The Charge of violating Article 112a, UCMJ. The SJA's recommendation to approve the applicant's request for a Chapter 10 discharge was approved by the GCMCA.

(2) Legal Consultation Date: 4 October 2006

(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: 27 October 2006 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 June 2005 / 6 years

b. Age at Enlistment / Education / GT Score: 37 / some college / 117

c. Highest Grade Achieved / MOS / Total Service: E-6 / 25Q3P, Multichannel Transmission Systems Operator-Maintainer / 8 years, 10 months, 25 days

d. Prior Service / Characterizations: RA, 23 September 1997 – 31 October 2000 / HD
RA, 1 November 2000 – 15 March 2004 / HD
RA, 16 March 2004 – 19 June 2005 / HD

e. Overseas Service / Combat Service: SWA / Iraq (19 March 2003 – 30 June 2003; 30 November 2004 – 19 July 2005)

f. Awards and Decorations: ARCOM-4, AAM-3, JMUA, MUC, AGCM-2, NDSM, GWOTEM, GWOTSM, ICM, NCOPDR-2, ASR, OSR

g. Performance Ratings: July 2004 – June 2005 / Among the Best
July 2005 – February 2006 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record: Developmental Counseling Form for separation proceedings and out-processing.

Memorandum, 29 August 2006, rendered by the garrison commander, ordered the applicant to not enter the residential neighborhood of Fort Bragg because of participating in a domestic disturbance at the applicant's family housing, which required the military police to intervene on 17 August 2006.

Seven Personnel Action forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 3 August 2006;
From "AWOL" to "PDY," effective 11 August 2006;
From "PDY" to "AWOL," effective 17 August 2006;
From "AWOL" to "Dropped From Rolls (DFR)," effective 18 September 2006;
From "DFR" to "PDY," effective 2 October 2006;
From "PDY" to "Confined by Military Authorities (CMA)" effective 2 October 2006; and
From "CMA" to "PDY," effective 28 October 2006.

Memorandum, 27 October 2006, as described in previous paragraph 3c(1).

i. Lost Time / Mode of Return: 80 days:

AWOL, 3 August 2006 – 10 August 2006, for 8 days / Returned to Military Control
AWOL, 17 August 2006 – 1 October 2006, for 46 days / Apprehended by Military Authorities
AWOL, 2 October 2006 – 27 October 2006, for 26 days / Released from Military Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs disability rating decision, 14 July 2014, reflecting the applicant was rated 50 percent disability for PTSD; bipolar disorder, and cocaine dependence in full sustained remission (also claimed as nervous condition, nightmares, sleep disorder, and memory loss.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; self-authored statement; DD Form 214; and VA disability rating decision.

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 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.

(5) 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.)

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 "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.

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-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 evidence in the applicant's 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 general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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 contends suffering from an untreated PTSD and bipolar disorder caused the discharge, and the VA has granted the applicant 50 percent disability for the PTSD, bipolar disorder, and cocaine dependence. The applicant provided a VA rating decision indicating a 50 percent disability rating for PTSD, bipolar disorder, and cocaine dependence in full sustained

remission (also claimed as nervous condition, nightmares, sleep disorder, and memory loss). The applicant's AMHRR contains no documentation of PTSD or any behavioral health diagnosis.

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: Adjustment Disorder, Depression, PTSD, and Bipolar Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is also diagnosed, and service connected by the VA for PTSD and Bipolar Disorder. Service connection establishes that the applicant's PTSD and Bipolar also existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions that mitigate the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is also diagnosed, and service connected by the VA for PTSD and Bipolar Disorder. Given the nexus between PTSD, Depression, and avoidance, the applicant's AWOLs are mitigated by the applicant's PTSD and Depression. The applicant's Bipolar Disorder may have also contributed to the AWOL given the nexus with impulsivity. There is a nexus between PTSD, Depression, Bipolar Disorder and self-medicating with substances, so the applicant's substance use is mitigated. Finally, there is a nexus between PTSD and difficulty with authority, so disobeying a lawful order is also mitigated.

(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 Depression, PTSD, and Bipolar Disorder outweighed the AWOL, disobeying a lawful order, and 2x positive UA basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Depression, PTSD, and Bipolar Disorder fully outweighing the applicant's AWOL, disobeying a lawful order, and 2x positive UA basis for separation.

(2) The applicant contends suffering from an untreated PTSD and bipolar disorder caused the discharge, and the VA has granted the applicant 50 percent disability for the PTSD, bipolar disorder, and cocaine dependence. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Depression, PTSD, and Bipolar Disorder fully outweighing the applicant's AWOL, disobeying a lawful order, and 2x positive UA basis for separation.

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c. The Board determined the discharge is inequitable based on the applicant's PTSD, Depression and Bipolar Disorder mitigating applicant's AWOL, disobeying a lawful order, and 2x positive UA. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. The applicant has exhausted their 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 Honorable because the applicant's PTSD, Depression, and Bipolar Disorder mitigated the applicant's misconduct of AWOL, disobeying a lawful order, and 2x positive UA. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

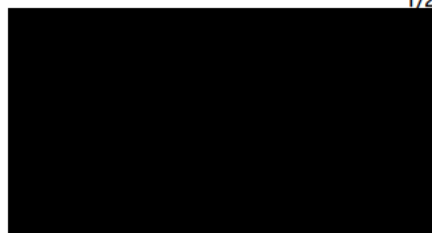
(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** RE-3
- e. **Change Authority to:** AR 635-200, paragraph 14-12a

Authenticating Official:

1/26/2024



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