

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, receiving a PTSD diagnosis after a service-connected MST.

b. Board Type and Decision: In a records review conducted on 9 November 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's MDD outweighing the FTRs, minor disciplinary infractions, and substandard performance. The medically unmitigated misconduct of culpable negligence did not rise to a level that negated meritorious service required for an upgrade in discharge. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. The Board also determined the applicant's RE code was proper and equitable due to applicant's MDD and PTSD warranting consideration prior to reentry of military service.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 26 June 2009

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 6 May 2009

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

The applicant received a Company Grade Article 15 on 14 May 2008 for failing to report, and a Field Grade Article 15 on 13 January 2009 for culpable negligence.

The applicant received numerous counseling for minor disciplinary infractions in violation of the UCMJ.

The applicant continued to be a substandard performer and had not improved regarding military discipline.

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

(4) Legal Consultation Date: On 3 June 2009, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 5 June 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 January 2006 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 119

c. Highest Grade Achieved / MOS / Total Service: E-3 / 25B10, IT Specialist / 3 years, 5 months, 8 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Forty Developmental Counseling Forms for various acts of misconduct.

CG Article 15, 14 May 2008, for failing to go at the time prescribed to the appointed place of duty on three separate occasions on 6 and 7 February, and 2 May 2008. The punishment consisted of a reduction to E-2 and forfeiture of \$352 pay (suspended).

Military Police Blotter Report, 30 December 2008, reflects the applicant was apprehended for endangering the welfare of two minors (on post).

FG Article 15, 13 January 2009, for endangering the lives of two children under the age of 16 by leaving them strapped car seats and unattended for 10 minutes inside a vehicle on 30 December 2008. The punishment consisted of a reduction to E-1 (suspended) and an oral reprimand.

Memorandum, 6 May 2009, rendered by the company commander and acknowledged by the applicant, indicates the applicant had not been identified as the victim of a sexual assault in an unrestricted report filed within the past 24 months.

Report of Behavioral Health Evaluation (BHE), 8 May 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The BHE was considered by the separation authority.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Progress Notes, 26 October 2010 to 5 August 2015, reflect diagnoses and therapy treatments for an “Adjustment Disorder with mixed depression and anxiety,” and PTSD, and identified as a veteran with 30 percent service-connected for chronic adjustment disorder. The medical history were PTSD, history of MST, and adjustment disorder with depressed mood.

(2) AMHRR Listed: Report of Medical History, 15 May 2009, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: “Counseling and depression from abusive ex[spouse].”

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

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 14-12a 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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, Misconduct (Minor Infractions).

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 to have receive a PTSD diagnosis after a service-connected MST. The applicant provided VISTA Electronic Medical Progress Notes, 26 October 2010 to 5 August 2015, reflecting the applicant was receiving therapy for diagnosed adjustment disorder with mixed depression and anxiety and PTSD diagnoses. The applicant's AMHRR contains documentation which supports a diagnosis of in-service depression. The record shows the applicant underwent a behavioral health evaluation (BHE) on 8 May 2009, which indicates the applicant was mentally responsible with a clear-thinking process. The diagnosis was deferred. The BHE was considered by the separation authority.

The applicant contends the PTSD was the result of a service-connected MST. The applicant submitted VA medical records that reference MST. The applicant is service-connected for PTSD secondary to MST. The applicant's AMHRR is void of any investigative report of an MST incident involving the applicant.

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: PTSD/MST, MDD, Chronic Adjustment Disorder, and Anxiety NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is service connected (SC) for MDD and PTSD. A further review of the records does not support the applicant's SC PTSD/MST diagnosis as the reported trauma involved Intimate Partner Violence (IPV) caused by the applicant's spouse during the applicant's military service and not MST. The applicant's Chronic Adjustment Disorder and Anxiety NOS existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the

applicant's MDD mitigates the applicant's FTR, minor disciplinary infractions, and substandard performance given the association between MDD and decreased motivation, lethargy, and withdrawal and these offenses. However, the applicant's PTSD/MST, MDD, Chronic Adjustment Disorder, and Anxiety NOS do not mitigate the applicant's offense of culpable negligence (leaving children unattended in a vehicle) as the applicant did not have a condition to impact the ability to differentiate between right and wrong and adhere to there right.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's MDD partially outweighs the basis of separation pertaining to FTRs, minor disciplinary infractions, and substandard performance; however, the applicant's MDD, PTSD, Chronic Adjustment Disorder, and Anxiety NOS did not outweigh culpable negligence. The Board determined that the remaining medically unmitigated misconduct did not rise to a level that negated meritorious service required for an upgrade in discharge.

b. Response to Contention(s): The applicant contends the PTSD was the result of a service-connected MST. The Board considered this contention, but ultimately did not address it as the Board voted to upgrade the applicant's discharge based on the applicant's MDD partially outweighing the FTRs, minor disciplinary infractions, and substandard performance and the remaining unmitigated misconduct did not rise to a level that negated meritorious service required for an upgrade.

c. The Board determined that the characterization of service was inequitable based on the applicant's MDD outweighing the FTRs, minor disciplinary infractions, and substandard performance. The medically unmitigated misconduct of culpable negligence did not rise to a level that negated meritorious service required for an upgrade in discharge. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. The Board also determined the applicant's RE code was proper and equitable due to applicant's MDD and PTSD warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

b. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's MDD outweighed the FTRs, minor disciplinary infractions, and substandard performance. The medically unmitigated misconduct of culpable negligence did not rise to a level that negated the meritorious service required for an upgrade in discharge. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change due to applicant's MDD and PTSD warranting consideration prior to reentry of military service.

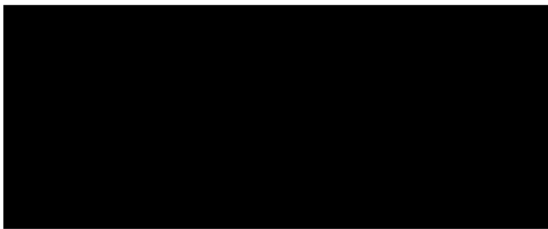
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- 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