

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being convicted of a serious crime which was a result of PTSD. The applicant did not get the opportunity to go to the separation board because they did not have time granted by the state of California to meet the number of days the process would take. The applicant was on the third term of enlistment when this incident occurred and throughout the career, the applicant was rated among the best. The applicant believes the reason they received the other than honorable discharge was because they reported the company commander to the battalion commander for retreating during a fire fight in Afghanistan and left them without communication assets. The applicant believes the type of discharge was unjust because throughout the treatment for PTSD, the applicant was never told how serious the condition was until the applicant was out of the military. The applicant was not aware of the severity the disorder had on the applicant until the applicant's life came to a halt with one incident which led to a felony conviction. The apply did not receive a post deployment health assessment before being allowed to return home to California where the applicant was ultimately convicted of the felony. The applicant did not fight the conviction out of fear of the case and spending time in jail and having the young children seeing the applicant behind bars. The applicant was also working with a public defender who continued to encourage the applicant to take a deal with the district attorney. The applicant would love nothing more than to be back in a uniform and fighting for the country because it is where the applicant knows they belong.

b. Board Type and Decision: In a records review conducted on 24 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: Misconduct (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 17 November 2014

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 25 August 2014

(2) Basis for Separation: The applicant was informed of the following reasons: On 26 June 2014, the applicant was convicted in civil court on the count of battery causing serious bodily injury.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 28 August 2014

(5) Administrative Separation Board: On 14 October 2014, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 23 October 2014 / Under Other Than Honorable Conditions (The separation authority approved the unconditional waiver, 14 October 2014).

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 March 2012 / 3 years

b. Age at Enlistment / Education / GT Score: 23 / High School Graduate / 108

c. Highest Grade Achieved / MOS / Total Service: E-5 / 12N2P, Horizontal Construction Specialist / 6 years, 5 months, 19 days

d. Prior Service / Characterizations: RA, 29 May 2008 – 21 August 2011 / HD
RA, 22 August 2011 – 29 February 2012 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (11 February 2013 – 26 October 2013); Iraq (1 June 2009 – 1 June 2010)

f. Awards and Decorations: ARCOM, AAM-2, MUC, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CAB

g. Performance Ratings: 1 August 2011 – 30 April 2012 / Among The Best
1 May 2012 – 30 April 2013 / Among The Best

h. Disciplinary Action(s) / Evidentiary Record: Record of Trial by Summary Court-Martial, 7 October 2013, reflects the applicant was charged with Article 92, UCMJ.

Specification 1: On or about 30 June 2013 and on or about 4 August 2013, fail to obey a lawful general order, 30 June 2013, by wrongfully producing a tattoo on PFC P. N.'s arm.

Specification 2: On or about 30 June 2013 and on or about 4 August 2013, fail to obey a lawful general order, 30 June 2013, by wrongfully possessing a tattoo gun.

The sentence adjudged: Forfeiture \$1,000 pay per month for one month, reduction to E-4; and restriction for 20 days.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Medical Record, 30 December 2010, reflects a history of traumatic brain injury.

Sun Valley Behavioral Medical Center, Psychiatric Evaluation, 2 December 2013, reflects the applicant was diagnosed with Axis 1: 309.81 Posttraumatic Stress Disorder and 296.90 Mood Disorder Axis 4: Psychosocial Stressors Environmental.

Sun Valley Behavioral Medical Center, Psychiatric Evaluation, 13 March 2014, reflects the applicant was diagnosed with Axis 1: 309.81 Posttraumatic Stress Disorder and 296.89 Other Bipolar Disorder; and Axis 4: Psychosocial Stressors Family Problems.

Health Record, Chronological Record of Medical Care, 24 July 2014, reflects the applicant was diagnosed with PTSD.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; DD Form 214; DA Form 2166-8; DA Form 638; Promotion Point Worksheet; 13 certificates; DA Form 705; DA Form 5790-R; verification of military experience and training record; 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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 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.

(6) 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.

(7) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

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 good service, including two combat tours. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends being convicted of a serious crime which was a result of PTSD. The applicant believes the type of discharge was unjust because throughout the treatment for PTSD, the applicant was never told how serious the condition was until the applicant was out of the military. The applicant was not aware of the severity this disorder had on the applicant until the applicant's life came to a halt with one incident which led to a felony conviction. The applicant provided Sun Valley Behavioral Medical Center, Psychiatric Evaluation, 2 December 2013, which reflects the applicant was diagnosed with Axis 1: 309.81 Posttraumatic Stress Disorder and 296.90 Mood Disorder Axis 4: Psychosocial Stressors Environmental. Sun Valley Behavioral Medical Center, Psychiatric Evaluation, 13 March 2014, reflects the applicant was diagnosed with Axis 1: 309.81 Posttraumatic Stress Disorder and 296.89 Other Bipolar Disorder; and Axis 4: Psychosocial Stressors Family Problems. Health Record, Chronological Record of Medical Care, 24 July 2014, reflects the applicant was diagnosed with PTSD. The AMHRR does not contain a mental status evaluation.

The applicant contends not having the opportunity to go to the separation board because they did not have enough time granted by the state of California to meet the number of days the process would take. The AMHRR reflects the applicant waived consideration of the case by an administrative separation board on 14 October 2014.

The applicant contends receiving an under other than honorable conditions discharge because the applicant reported the company commander to the battalion commander for retreating during a fire fight in Afghanistan and left others without communication assets. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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.

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: PTSD, Major Depressive Disorder (MDD) with psychotic features, Anxiety Disorder, Schizoaffective Disorder bipolar type.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent service connected (SC) for PTSD related to combat.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is 100 percent SC for PTSD with other potentially mitigating diagnosis of MDD with psychotic feature, Anxiety Disorder, and Schizoaffective Disorder bipolar type. As felony assault is not natural sequela of PTSD, there is no nexus between the SC diagnosis and the applicant basis for separation. This also holds true for Anxiety Disorder. Regarding the applicant's diagnosis of Schizoaffective Disorder bipolar type, there is no evidence in the record that the applicant met diagnostic criteria for the disorder during military service and no indication that applicant had a condition during service that rendered applicant unable to differentiate between right and wrong and adhere to the right, therefore Schizoaffective Disorder also does not mitigate the applicant's misconduct. Regarding MDD with psychotic features, the applicant reported that symptoms of depression began after witnessing friend being shot during deployment and that applicant's Audio Visual Hallucinations (AVH) began subsequent the depressive symptoms. While it is not clear to this advisor if the applicant's reported history of AVH suggest problems in reality testing that would have mitigated his misconduct, it is clear from the records the applicant episodes of AVH were associated with an event that happened after he committed felony assault and therefore MDD with psychotic features could not have mitigated the applicant's misconduct. Finally, regarding the reference to TBI in the 4j section of the CRD, after reviewing the record, there is no indication the applicant's previous TBI incident in 2010 was sufficient to result in significant impairment in judgement, cognition, or behavior that would have resulted in him being unable to differentiate between right and wrong and adhere to the right, and therefore does not mitigate misconduct characterized by felony assault.

(4) Does the condition or experience outweigh the discharge? **N/A.**

a. Response to Contention(s):

(1) The applicant contends good service, including two combat tours. The Board considered the applicant's six years of service, including two combat tours in Afghanistan and Iraq to include the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's misconduct of felony assault (causing serious bodily harm) and two time failure to obey a lawful general order.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined due to the severity of the misconduct, domestic assault, this contention does not outweigh or excuse the misconduct.

(3) The applicant contends being convicted of a serious crime which was a result of PTSD. The applicant believes the type of discharge was unjust because throughout the treatment for PTSD, the applicant was never told how serious the condition was until the applicant was out of the military. The applicant was not aware of the severity this disorder had on the applicant until the applicant's life came to a halt with one incident which led to a felony conviction. The Board considered this contention and determined that felony assault is not a natural sequela of PTSD and there is no nexus between the applicant service connection

diagnosis and the applicant basis for separation – felony assault (causing serious bodily harm and injury).

(4) The applicant contends not having the opportunity to go to the separation board because they did not have enough time granted by the state of California to meet the number of days the process would take. The Board considered this contention and determined on 14 October 2014, the applicant unconditionally waived consideration of the case before an administrative separation board.

(5) The applicant contends receiving an under other than honorable conditions discharge because the applicant reported the company commander to the battalion commander for retreating during a fire fight in Afghanistan and left others without communication assets. The Board considered this contention and determined due to the severity of the misconduct, domestic assault, this contention does not outweigh or excuse the misconduct. There was no evidence presented to the Board to convince the Board of any mitigating circumstances.

(6) The applicant desires to rejoin the Military Service. The Board considered this contention and determined that a change to the applicant's characterization of service/RE code is not warranted because at the time of discharge, the applicant received an under other than honorable conditions characterization of service for the offenses committed as outlined above in 9b (3).

b. 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.

c. 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 PTSD diagnoses did not excuse or mitigate the offenses of felony assault (causing serious bodily harm) and two time failure to obey a lawful general order. 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.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001555

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:

12/29/2023

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