

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, an upgrade would allow the applicant to receive the GI Bill educational benefits to further the education in a desired profession. A degree would provide for the child while also assisting with the spouse's thyroid cancer treatments. The applicant was granted a service-connected disability for PTSD.

b. Board Type and Decision: In a records review conducted on 12 September 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's diagnosis of PTSD, MST and TBI mitigate the applicant's misconduct of disobeying and NCO, FTRs and disrespecting an NCO. 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 Secretarial Authority, with a corresponding separation code of JFF. The board determined the current reentry code was proper and equitable based on the applicant's medical diagnosis and therefore voted not to change it.

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: 26 September 2011**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 21 May 2011

(2) Basis for Separation: The applicant was informed of the following reasons: Between 1 August 2010 and 18 April 2011, the applicant failed to obey a lawful order from a noncommissioned officer; failed to go at the time prescribed to the appointed place of duty; failed to obey a lawful command by CPT A. E., to not be in the male living quarters; and was disrespectful in language and deportment towards SFC B. M.

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

(4) Legal Consultation Date: On 28 May 2011, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 26 June 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 June 2009 / 4 years

b. Age at Enlistment / Education / GT Score: 17 / High School Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-2 / 92A10, Automated Logistical Specialist / 2 years, 3 months, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (28 October 2010 – 28 July 2011)

f. Awards and Decorations: NATOMDL, NDSM, ACM-2CS, GWOTSM, ASR

The applicant's AMHRR reflects the applicant served an overseas tour; however, the award is not reflected on the DD Form 214.

g. Performance Ratings: NA

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

Summarized Article 15, 10 September 2010, for disobeying an NCO on 2 August 2010. The punishment consisted of extra duty for 7 days.

FG Article 15, 20 February 2011, for disobeying a commissioned officer, CPT E. on 30 December 2010. The punishment consisted of a reduction to E-1 and forfeiture of \$822 pay per month for one month (suspended).

Record Of Supplementary Action Under Article 15, UCMJ, 18 April 2011, reflects the suspended portion of the punishment imposed on 20 February 2011, was vacated for violation of Article 86, UCMJ, by failing to go at the time prescribed to the appointed place of duty on 25 March 2011.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Veterans Administration Disability Rating Decision, 6 November 2013, reflecting the applicant was rated 70 percent disability for PTSD with depression and anxiety symptoms due to personal trauma.

(2) AMHRR Listed: Report of Medical History, 27 February 2011, the applicant noted anxiety, trouble sleeping, and depression, and the examining medical physician noted in the comments section: The applicant was taking 50 mg Zoloft.

Report of Behavioral Health Evaluation (BHE), 28 February 2011, 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 findings for "AXIS I" diagnosis reflect "Occupational Problem." The BHE was considered by the separation authority.

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

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is

clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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

The applicant contends an upgrade would allow educational benefits through the GI Bill. 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 applicant contends having been granted service-connected disability for PTSD. The applicant provided a Veterans Administration Disability rating decision, which reflects the applicant was rated 70 percent disability for PTSD with depression and anxiety symptoms due to personal trauma. The applicant's AMHRR contains documentation which supports treatment for in-service depression and prescribed medication. The record shows the applicant underwent a behavioral health evaluation (BHE) on 28 February 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The BHE was considered by the separation authority.

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, TBI, MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence of PTSD associated with/present at the time of service (service connected and subsuming active duty adjustment disorder diagnoses); asserted history of MST; and history of reported TBI occurring during 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 applicant has established PTSD through service connection, which subsumes adjustment disorder diagnoses made on active duty. Her records also indicate history of MST associated with PTSD diagnosis and a history of a mild TBI. PTSD and TBI are associated with irritability, with PTSD (especially if related to MST) also associated with distrust/disrespect of authority figures, which mitigates minor disrespectful language and deportment misconduct cited in the basis. It is difficult to opine on mitigation for the initial incident in the basis (failure to obey a lawful order) as this appeared to have occurred before deployment and reported TBI event, and the initial presence of her claimed MST is unclear. Such conditions do not typically mitigate failure to comply with an order, although in the context of MST and associated distrust of authority figures, under liberal consideration guidelines it is reasonable to grant mitigation for what appears to be a relatively minor offense. PTSD is associated with avoidance behaviors, thus mitigates the FTR misconduct associated with discharge. Finally, none of the documented conditions or MST would result in inability to differentiate right from wrong and adhere to the right, and there is no nexus between such conditions/circumstances and failing to follow a lawful command by being in the living quarters of the opposite sex.

(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 PTSD, MST and TBI outweighed the disobeying and NCO, FTRs and disrespecting an NCO basis for separation for the aforementioned reason(s). The Board determined the non-mitigated misconduct of being in male barracks was minor and voted to grant relief based on medical mitigation of the majority of the applicant's patterns of misconduct infractions.

b. Response to Contention(s):

(1) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

(2) The applicant contends having been granted service-connected disability for PTSD. The Board liberally considered this contention and determined that that the applicant's PTSD, MST and TBI outweighed the disobeying and NCO, FTRs and disrespecting an NCO basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's diagnosis of PTSD, MST and TBI mitigate the applicant's misconduct of disobeying and NCO, FTRs and disrespecting an NCO. 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 Secretarial Authority, with a corresponding separation code of JFF. The board determined the current reentry code was proper and equitable based on the applicant's medical diagnosis and therefore voted not to change it.

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AR20210001576

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD, MST and TBI mitigated the applicant's misconduct of disobeying and NCO, FTRs and disrespecting an NCO. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

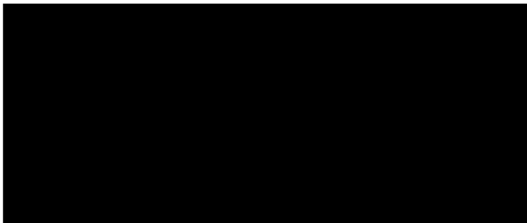
(3) The RE code will not change, as the Board determined the current code is proper and equitable based on the applicant's medical diagnosis.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: Secretarial Authority / JFF**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

1/16/2024



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