

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 period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant's service to the Army was honorable and the applicant always advanced at their job and duty as a Soldier. Several "gray areas" seem to have gotten the applicant in trouble and the applicant had no desire to be a bad Soldier. Every negative thing which ultimately led to the situation had to do with personal situations and not military duty. The applicant was in a company where political favorites always won out over the reality of the situation. The applicant experienced bullying and oppression while serving. The applicant is currently employed full-time and has been for over a year. The applicant wants to succeed, and this blemish is, in the applicant's opinion, unwarranted. The applicant is pursuing a career in law enforcement and wants to be able to have a good legacy for their future family as the applicant continues to serve the public in the civilian world. Not only does this discharge look bad on the applicant, it also prevents the applicant from using the GI Bill and being able apply for certain jobs.

b. **Board Type and Decision:** In a records review conducted on 7 September 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 14 May 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 April 2014

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

The applicant failed to obey an order from SGT G., a noncommissioned officer, on or about 14 January 2014, by failing to wait for the required escort, SPC H., to pick the applicant up from the ACS appointment.

The applicant failed to obey an order from SSG G., a noncommissioned officer, on or about 13 January 2014, by failing to change into the correct uniform for the 1000 Battalion formation.

The applicant failed to report for duty on or about 18 December 2013. The applicant was scheduled to perform extra duty beginning at 1300 hours yet failed to report until 1800 hours.

The applicant was disrespectful in language and deportment towards SGT D. E. and SGT B. H. on or about 8 October 2013 by saying to them "I don't give a fuck. I'm still going to drive".

The applicant damaged military property, on or about 14 June 2013, by driving a truck through a section of grass in the B company footprint;

The applicant failed to obey an order given by SSG K., a noncommissioned officer, on or about 6 June 2012, by riding a motorcycle without first obtaining proof the applicant had completed the required safety courses; and,

The applicant was disrespectful in language and deportment towards SGT T. L. on or about 4 January 2012 by saying "I don't have to do shit. I'm in civilian clothes."

(3) Recommended Characterization: The Company Commander recommended an honorable discharge; however, the Battalion and Brigade Commander recommended a general (under honorable conditions)

(4) Legal Consultation Date: 10 April 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 23 April 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 3 May 2011 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 20 / GED / 103

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 12B10, Combat Engineer / 3 years, 12 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:** CG Article 15, 19 July 2012, for disobeying a lawful order on or about 6 June 2012. The punishment consisted of a reduction to E-1; 14 days extra duty and an oral reprimand.

FG Article 15, 26 November 2013, for being disrespectful in language and deportment toward three noncommissioned officers and disobeying two noncommissioned officers on or about 8 October 2013; The punishment consisted of a reduction to E-2; forfeiture of \$849 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Developmental Counseling Forms, for failure to be at appointed place of duty; disobeying an order from an NCO; violation of restriction set in place following pervious article 15; insubordinate conduct/disrespect towards an NCO x 2; wearing the wrong PT uniform; failure to report to extra duty and lying to a NCO; aggressive driving; lying to a senior NCO; failure to wear proper PPE; and, failure to have proper documentation for motorcycle.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 24 March 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with Axis I: Adjustment Disorder with mixed anxiety and depressed mood (acute).

5. **APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 293; DD Form 149; self-authored statement; two DD Forms 214.

6. **POST SERVICE ACCOMPLISHMENTS:** The applicant is currently employed full-time and has been for over a year.

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.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, Pattern of Misconduct.

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends good service.

The applicant contends being in in a company where political favorites always won out over the reality of the situation. The applicant experienced bullying and oppression while serving. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's 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 an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant is currently employed full-time and has been for over a year. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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: (Chronic) Adjustment Disorder, and Anxiety Disorder NOS.

(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 Anxiety Disorder NOS. The VA has also service connected the applicant for Chronic Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no natural sequela between an Adjustment Disorder or Anxiety Disorder NOS and failing to obey orders, FTRs, disrespect, or damaging military property.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, to include the Board Medical Advisor opine, the Board determined that the applicant's Chronic Adjustment Disorder and Anxiety Disorder NOS do not mitigate to applicant's basis of separation – multiple incidences of disobeying a direct order, multiple FTRs, multiple incidences of disrespect, and damage to military property.

b. Response to Contention(s):

(1) The applicant contends good service. The Board considered the applicant's 3 years of service but determined that these factors did not outweigh the applicant's multiple cases of disobeying an order from an NCO, multiple FTRs, and multiple incidents of disrespect to an NCO, and damage to military property.

(2) The applicant contends being in a company where political favorites always won out over the reality of the situation. The applicant experienced bullying and oppression while serving. The Board considered this contention and determined there is insufficient evidence to support that being in a company where political favorites always won out over the reality of the situation and experienced bullying and oppression while serving. Ultimately, this contention does not outweigh or excuse the applicant's pattern of misconduct.

(3) 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.

(4) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(5) The applicant is currently employed full-time and has been for over a year.\ The Board considered this contention and determined that the applicant's post-service accomplishments do not outweigh the misconduct based on the seriousness of the applicant's offenses of multiple cases of disobeying an order from an NCO, FTRs, multiple cases of disrespect to an NCO, and damage to military property.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service based on the following reason: There is no natural sequela between an Adjustment Disorder or Anxiety Disorder NOS and failing to obey orders, FTRs, disrespect, or damaging military property. Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's Adjustment Disorder and Anxiety Disorder (NOS) did not outweigh the basis of separation - multiple disobeying an order from an NCO, FTR, multiple incidents of disrespect to an NCO, and damage to military property. 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.

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:

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