

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being diagnosed with PTSD during the period of service and the PTSD led to the under other than honorable conditions discharge. All other periods of service were honorable.

b. Board Type and Decision: In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board, based on the applicant's PTSD mitigating multiple AWOLs, disobedience, and evading apprehension basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board determined the reentry eligibility (RE) code was proper and equitable based on the applicant's BH conditions warranting review for reentry to 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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Honorable

b. Date of Discharge: 16 August 2007

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): The AMHRR reflects two charge sheets.

On 3 August 2007, the applicant was charged with: The Charge: Violating Article 86, UCMJ.

Specification 1: On or about 10 July 2007, without authority, absent oneself from the unit and did so remain absent until on or about 16 July 2007.

Specification 2: On or about 18 July 2007, without authority, absent oneself from the unit and did remain absent until on or about 24 July 2007.

Specification 3: On or about 25 July 2007, without authority, absent oneself from the unit and did remain absent until on or about 27 July 2007.

On 7 August 2007, the applicant was charged with:

Charge I: Violating Article 90, UCMJ. The Specification: On divers occasions, between on or about 29 July 2007 and between on or about 3 August 2007, the applicant willfully disobeyed a lawful command from CPT C. D. C.

Charge II: Violating Article 95, UCMJ. The Specification: On or about 3 August 2007, the applicant fled apprehension by leaving the company area and driving away in a personally owned vehicle after having instructed by 1SG W. C., the applicant was being apprehend and to remain in the company area under guard while 1SG W. C. went to obtain handcuffs.

(2) Legal Consultation Date: undated

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 9 August 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 March 2006 / 3 years

b. Age at Enlistment / Education / GT Score: 27 / High School Graduate / 126

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 8 years, 3 months, 16 days

d. Prior Service / Characterizations: ARNG, 15 April 1999 – 1 August 1999 / NIF
IADT, 2 August 1999 – 19 November 1999 / HD
ARNG, 20 November 1999 – 5 May 2002 / NIF
OAD, 6 May 2002 – 2 February 2003 / HD
ARNG, 3 February 2003 – 14 April 2005 / HD
USARCG, 15 April 2005 – 20 March 2006 / NIF

e. Overseas Service / Combat Service: Egypt / None

f. Awards and Decorations: AAM, ARCAM, NDSM, GWOTEM, GWOTSM, ASR, OSR, ARCOTR, AFRM-M, MFOM,

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Eight Personnel Action Forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 10 July 2007;
From "AWOL" to "PDY," effective 16 July 2007;
From "PDY" to "AWOL," effective 18 July 2007;
From "AWOL" to "PDY," effective 24 July 2007;
From "PDY" to "AWOL," effective 25 July 2007;
From "AWOL" to "PDY," effective 26 July 2007;

From "PDY" to "AWOL," effective 29 July 2007; and,
From "PDY" to "AWOL," effective 2 August 2007.

Developmental Counseling Form, for disobeying a lawful order.

Two Charge Sheets as described in paragraph 3c(1).

i. Lost Time / Mode of Return: 17 days:

AWOL, 10 July 2007 – 16 July 2007 / NIF

AWOL, 18 July 2007 – 24 July 2007 / NIF

AWOL, 25 July 2007 – 26 July 2007 / NIF

AWOL for 4 days, 29 July 2007 – 1 August 2007 and 2 August 2007 – 3 August 2007. This period is not annotated on the DD Form 214 block 18.

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Behavioral Medicine Letter, 10 July 2007, reflects the applicant had been a patient in the Behavioral Medicine Clinic, since 25 October 2006 under psychiatric care and was being treated for diagnoses of generalized anxiety disorder, impulse control disorder, not otherwise specified; and post-traumatic stress disorder.

Department of Behavioral Medicine Letter, 25 July 2007, reflects the applicant had been a patient in the Behavioral Medicine Clinic since 25 October 2006 and being treated for two medical disorders, Impulse Control Disorder and Post-Traumatic Stress Disorder and an MEB was being conducted for these two disorders.

Department of Behavioral Medicine Letter, 26 July 2007, reflects the applicant had been a patient in the Behavioral Medicine Clinic since 25 October 2006 and was being treated for diagnoses of Impulse Control Disorder, not otherwise specified, and Post-Traumatic Stress Disorder and was undergoing an MEB for both of these disorders.

Health Record, Chronological Record, 3 August 2007, reflects chronic Post-Traumatic Stress Disorder. Pt physically fit of confinement but cannot clear psychologically as condition could be aggravated by confinement.

VA Rating Decision, 5 March 2013, reflects the applicant was granted 30 percent service-connected disability for PTSD.

VA Rating Decision, 3 April 2015, reflects the applicant evaluation of PTSD, which was 30 percent disabling, was increased to 50 percent effective 21 August 2007. An evaluation of 70 percent was assigned from 23 March 2013.

(2) AMHRR Listed: Department of Behavioral Medicine Memorandum, 25 July 2007, reflects the applicant had been a patient in the Behavioral Medicine Clinic since 25 October 2006 and being treated for two medical disorders, Impulse Control Disorder and Post-Traumatic Stress Disorder and an MEB was being conducted for these two disorders.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; three DD Forms 214; NGB Form 22; three VA Rating Decision letters; three Department of Behavioral Medicine letters; Health Record.

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 635-40, paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(4) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

g. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of

service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The honorable discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends suffering from PTSD during this period of service and all other periods of service were honorable. The applicant provided a Department of Behavioral Medicine letter, 10 July 2007, which reflects the applicant had been a patient in the Behavioral Medicine Clinic, since 25 October 2006 under psychiatric care and was being treated for diagnoses of generalized anxiety disorder, impulse control disorder, not otherwise specified; and post-traumatic stress disorder. A Department of Behavioral Medicine letter, 25 July 2007, which reflects the applicant had been a patient in the Behavioral Medicine Clinic since 25 October 2006 and being treated for two medical disorders, Impulse Control Disorder and Post-Traumatic Stress Disorder and a Medical Evaluation Board (MEB) was being conducted for these two disorders. A Department of Behavioral Medicine letter, 26 July 2007, which reflects the applicant had been a patient in the Behavioral Medicine Clinic since 25 October 2006 and was being treated for diagnoses of Impulse Control Disorder, not otherwise specified, and Post-Traumatic Stress Disorder and was undergoing an MEB for both of these disorders. A Health Record, Chronological Record, 3 August 2007, which reflects chronic Post-Traumatic Stress Disorder. Patient physically fit for confinement but cannot clear psychologically as condition could be aggravated by confinement. A VA Rating Decision, 5 March 2013, reflects the applicant was granted 30 percent service-connected disability for PTSD. A VA Rating Decision, 3 April 2015, reflects the applicant had an evaluation of PTSD, which was 30 percent disabling, and was increased to 50 percent effective 21 August 2007. An evaluation of 70 percent was assigned from 23 March 2013. The AMHRR does not contain a mental status evaluation.

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: Anxiety Disorder NOS, Generalized Anxiety Disorder, Impulse Control Disorder, and Chronic PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found in service diagnoses of Anxiety Disorder NOS, Generalized Anxiety Disorder, and PTSD. The VA has also service connected the applicant's PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple potentially mitigating BH conditions to include in service diagnoses of Anxiety Disorder NOS, Generalized Anxiety Disorder, and PTSD. The VA has also service connected the applicant's PTSD. Given the nexus between PTSD, avoidance, and difficulty with authority, the AWOLs, disobeying lawful commands, and fleeing apprehension are mitigated by applicant's PTSD. However, the applicant already has an HD suggesting that the appropriate mitigation has already been applied.

(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 outweighed multiple AWOLs, disobedience, and evading apprehension basis for separation for the aforementioned reason(s).

b. Response to Contention(s): The applicant contends suffering from PTSD during this period of service and all other periods of service were honorable. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's multiple AWOLs, disobedience, and evading apprehension charges.

c. The Board determined based on the applicant's PTSD mitigating multiple AWOLs, disobedience, and evading apprehension basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board determined the reentry eligibility (RE) code was proper and equitable based on the applicant's BH conditions warranting review for reentry to military service. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable, therefore no further relief is available.

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

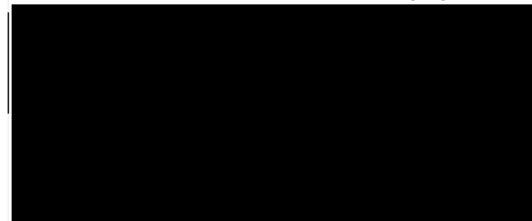
(3) The RE code will not change, based on the applicant's BH conditions warranting review for reentry to military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

1/17/2024



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