

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 the discharge was unfair and unjust because the accusations which led to it were never proven. The applicant contends being treated unfairly, harassed, and sexually assaulted. The applicant states the unit was unbearable and unjust, even during the time of miscarriage. The applicant contends, being married and pregnant by their spouse, but the command accused the applicant of being with a Soldier and would not send the applicant home, so the applicant miscarried. The applicant contends other Soldiers who did not fulfill their terms and had worse offenses were honorably discharged. The applicant further contends the discharge is preventing access to the G.I. Bill, which is paid for, and receiving disability for PTSD.

b. Board Type and Decision: In a records review conducted on 17 August 2023, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depressive Disorder and MST related PTSD mitigating the applicant's misconduct of failing to obey lawful orders and disobeying and disrespecting several noncommissioned officers. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined, given the applicant's medical diagnosis of Adjustment Disorder, Depressive Disorder and MST-related PTSD the RE code was proper and equitable and 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: 12 November 2008**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 13 September 2008

(2) Basis for Separation: The applicant was informed of the following reasons: Failed to repair on divers' occasions.

Inappropriate relationships with noncommissioned officers.

Solicited another Soldier to make false official statements.

Made false official statements.

Violated a lawful general order.

Disobeyed and disrespected several noncommissioned officers.

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

(4) Legal Consultation Date: 16 September 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 25 September 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 November 2006 / 3 years, 25 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92F10, Petroleum Supply Specialist / 2 years, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (11 September 2007 – 7 October 2008)

f. Awards and Decorations: NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 2 September 2008, for failing to go at the time prescribed to appoint place of duty on 13 August 2008. On or about 11 August 2008, fail to go at the time prescribed to appointed place of duty. On or about 9 August 2008, disobey a lawful order. On 8 August 2008, fail to obey a lawful general regulation by having an inappropriate relationship. On 9 August 2008, fail to obey a lawful order by entering the housing unit of an opposite gender Soldier. On 9 August 2008, wrongfully solicit, a Soldier to make a false official statement. The punishment consisted of forfeiture of \$750 pay per month for two months and extra duty and restriction for 30 days.

FG Article 15, 8 December 2007, for failing to obey a lawful general regulation (between 20 September and 12 October 2007). On or about 12 November 2007, make a false official statement. On divers' occasions between 20 September and 12 October 2007, wrongfully had sexual intercourse with a married NCO not their spouse. The punishment consisted of a reduction to E-2; (suspended); forfeiture of \$767; extra duty and restriction for 15 days.

Record Of Supplementary Action Under Article 15, UCMJ, date Illegible, reflects the suspended portion of the punishment imposed on 8 December 2008, was vacated for Article 86, failure to go at the time prescribed to appointed place on duty on 27 December 2007.

The U.S. Army Criminal Investigation Command Memorandum, 20 May 2016, reflects a search of the Army criminal file indexes utilizing the information provided revealed no records pertaining to the applicant.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

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

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.

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 receiving disability for PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends being treated unfairly, harassed, and sexually assaulted. The applicant contends the unit was unbearable and unjust, even during the time of the miscarriage. The applicant contends, being married and pregnant by their spouse, the command accused the applicant of being with a Soldier and would not send the applicant home, so the applicant miscarried. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. 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 other Soldiers who did not fulfill their terms and had worse offenses were honorably discharged. Applicable regulations state each case must be decided on an individual basis, considering the unique facts and circumstances of the case. other

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.

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: Adjustment Disorder, Depressive Disorder and MST-related PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant indicated that she was sexually assaulted in August of 2007. She was deployed in September 2007 and indicated that sexual harassment began 2-3 months into her deployment and continued throughout the duration of her deployment. No evidence could be found of any misconduct, sanctions, or complaints of worsening depression or anxiety prior to the applicant's deployment. The VA has also service connected the applicant for PTSD related to MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that after review of all available information, there is evidence of multiple potentially mitigating BH conditions to include in service diagnoses of an Adjustment Disorder and Depressive Disorder. The applicant is also diagnosed, and service connected by the VA for PTSD related to MST. Applicant's BH conditions provide partial mitigation. Given the nexus between both PTSD and being the victim of MST and seeking to soothe via romantic relationships, the misconduct of having inappropriate relationships with noncommissioned officers is mitigated by the applicant's BH conditions. However, it is important to note that the applicant has consistently denied those allegations. In addition, given the nexus between PTSD/MST and difficulty with authority, it is likely that the applicant's BH conditions contributed to the failing to obey lawful orders and her disobeying and disrespecting several noncommissioned officers, so these misconducts are also mitigated. The remaining misconducts of a false official statement and soliciting another soldier to make false official statements are not mitigated by any of applicant's BH conditions to include an Adjustment Disorder, Depressive Disorder, PTSD, or MST because none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. However, the unmitigated misconducts are minor and far outweighed by applicant's PTSD/MST.

(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 Adjustment Disorder, Depressive Disorder and MST-related PTSD outweighed the listed basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends receiving disability for PTSD. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the

applicant's Adjustment Disorder, Depressive Disorder and MST-related PTSD mitigating the listed basis for separation for the aforementioned reason(s).

(2) The applicant contends being treated unfairly, harassed, and sexually assaulted. The applicant contends the unit was unbearable and unjust, even during the time of the miscarriage. The applicant contends being married and pregnant by their spouse, but the command accused the applicant of being with a Soldier and would not send the applicant home, so the applicant miscarried. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's Adjustment Disorder, Depressive Disorder and MST-related PTSD mitigating the listed basis for separation for the aforementioned reason(s).

(3) The applicant contends other Soldiers who did not fulfill their terms and had worse offenses were honorably discharged. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Adjustment Disorder, Depressive Disorder and MST-related PTSD mitigating the listed basis for separation for the aforementioned reason(s).

(4) 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.

c. The Board determined the discharge is based on the applicant's Adjustment Disorder, Depressive Disorder and MST related PTSD mitigating the applicant's misconduct of failing to obey lawful orders and disobeying and disrespecting several noncommissioned officers. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined, given the applicant's medical diagnosis of Adjustment Disorder, Depressive Disorder and MST-related PTSD the RE code was proper and equitable and voted not to change it as the BH conditions are service-limiting.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because Adjustment Disorder, Depressive Disorder and MST-related PTSD mitigating the listed basis for separation for the aforementioned reason(s). Thus, the prior characterization is no longer appropriate.

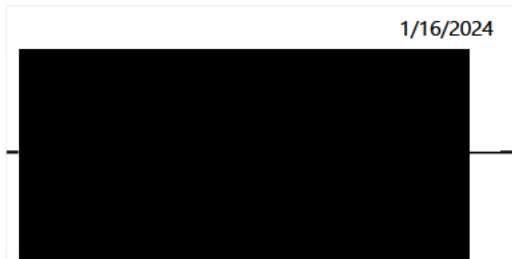
(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board determined, given the applicant's medical diagnosis of Adjustment Disorder, Depressive Disorder and MST-related PTSD the RE code was proper and equitable and voted not to change it as the BH conditions are service-limiting.

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, Chapter 15

Authenticating Official:



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs