

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after experiencing numerous traumatic events while serving overseas, the applicant was fortunate to return home. Despite seeking assistance for post-deployment difficulties, the applicant is still suffering from PTSD and physical ailments. The discharge is inequitable because the applicant was unable to receive the sought assistance. According to many noncommissioned officers, the applicant was not permitted to visit the aide station after redeployment. There was limited assistance available, and there were numerous hoops to jump through to acquire medical treatment. Seeking counseling resulted in being bullied by others, which was extremely uncomfortable and led to the decision not to receive treatment. The applicant fought daily to receive support and locate a place to live because of not being allowed to live in the barracks and had to appease the chain of command, who repeatedly put the applicant up for failure. If the applicant received the required assistance, the applicant would have made better choices. The applicant's career was robbed by vindictive noncommissioned officers, and there was no possibility for redemption because anything the applicant accomplished was met with an excess of resistance and company-level punishments. The unattainable deadlines and timelines caused the applicant to miss appointments and was penalized for doing so. The applicant would never consider oneself a failure, but the current discharge makes the applicant feel like one. The applicant is currently undergoing medical care through the VA, which is also a struggle. The applicant feels worthless knowing there is so much more the applicant can achieve with the skills and experiences gained in the Army but is unable to use them in present job with Publix. An upgrade would enable the applicant to return to school, commit oneself to an educational field, and become a medical practitioner, and help Soldiers in need. The applicant's goal is to reduce, and eventually eliminate, the unacceptable daily rate of 22 veteran suicides. The applicant further details the contentions in an allied self-authored statement provided with the application.

**b. Board Type and Decision:** In a records review conducted on 9 August 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:** 17 February 2011**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 3 December 2010

**(2) Basis for Separation:** The applicant was informed of the following reasons: Failing to obey a commissioned officer on two separate occasions; making a false official statement; and having an inappropriate relationship with a married person.

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

**(4) Legal Consultation Date:** 5 January 2011

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 20 January 2011 / General (Under Honorable Conditions)

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 6 February 2008 / 4 years, 19 weeks

**b. Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 108

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 3 years, 12 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (3 September 2008 – 24 August 2009)

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** A Developmental Counseling Form for perception of an improper cohabitation, being in an inappropriate relationship with the spouse of a noncommissioned officer of another unit, being given a no-contact order, and breaking the no-contact order.

Memorandum, subject: No Contact Order, 1 June 2010, rendered by the unit commander and acknowledged by the applicant, ordered the applicant not to contact, speak to, see, write or in any way communicate with A. R. (spouse of SSG R.) The order would remain in effect until further notice from the commander.

FG Article 15, dated 7 June 2010, for disobeying a superior commissioned officer on 1, 28, and 29 April 2010 The punishment consisted of a reduction to E-1; forfeiture of \$400 pay per month for two months (suspended); and extra duty and restriction for 45 days.

CG Article 15, dated 20 October 2010, for disobeying a superior commissioned officer on 24 September 2010, making a false official statement on 28 September 2010, and engaging in an inappropriate relationship with A. R, a married person between 18 July and 24 September 2010. The punishment consisted of forfeiture of \$337 pay; extra duty and restriction for 14 days; and an oral reprimand.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical History, dated 1 October 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Insomnia and adjustment disorder.

Report of Mental Status Evaluation (MSE), dated 18 November 2010, reflects the applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The MSE diagnosis reflected an "AXIS I: Adjustment DO."

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; self-authored statement; and DD Form 214.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is maintaining an employment with Publix.

**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 having to experience numerous traumatic events while serving overseas, despite seeking assistance for post-deployment difficulties, the applicant is still suffering from PTSD and physical ailments, and is receiving care from the VA. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 18 November 2010, which indicates the applicant was mentally responsible. The MSE indicated an "AXIS I" diagnosis of an adjustment disorder. The MSE was considered by the separation authority. The ARBA sent a letter to the applicant at the address in the application on 10 March 2016 requesting documentation to support a PTSD diagnosis but received no response from the applicant.

The applicant contends the discharge is inequitable because the applicant was unable to receive the assistance and was not permitted to visit the aide station after redeployment. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishments.

The applicant contends having to seek counseling resulted in being bullied by others, and the career was robbed by vindictive noncommissioned officers, and there was no possibility for redemption because anything the applicant accomplished was met with an excess of resistance and company-level punishments. There is no evidence in the AMHRR the applicant sought

assistance or reported the bullying or 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 enable the applicant to return to school, commit oneself to an educational field, and become a medical practitioner, and help Soldiers in need. Eligibility for veterans' benefits 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 Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends maintaining an employment with Publix. 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: PTSD and TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant's diagnoses of PTSD and TBI were related to applicant's combat deployment.

(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 service connected for PTSD and TBI and applicant's basis of separation are failing to obey an NCO on multiple occasions (apparently related to violating a no contact order), making a false official statement, and having an inappropriate relationship with another Soldier's spouse. Neither PTSD or TBI of the nature described in the applicant's records resulted in an inability to differentiate between right and wrong and adhere to the right and therefore the applicant's misconduct is not mitigated by PTSD or TBI.

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

b. Response to Contention(s):

(1) The applicant contends having to experience numerous traumatic events while serving overseas, and despite seeking assistance for post-deployment difficulties, the applicant is still suffering from PTSD and physical ailments, and is receiving care from the VA. The Board considered this contention and determined the applicant's is diagnosed with PTSD; however, applicant's PTSD does not have a nexus nor mitigates failure to obey a commissioned officer on two separate occasions, making a false official statement, and having an inappropriate relationship with a married person.

(2) The applicant contends the discharge is inequitable because the applicant was unable to receive the assistance sought and was not permitted to visit the aide station after redeployment. The Board considered this contention and determined 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(3) The applicant contends having to seek counseling resulted in being bullied by others, and the career was robbed by vindictive noncommissioned officers, and there was no possibility for redemption because anything the applicant accomplished was met with an excess of resistance and company-level punishments. The Board considered this contention and determined there is insufficient evidence to support this contention. Ultimately 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(4) The applicant contends an upgrade would enable the applicant to return to school, commit oneself to an educational field, and become a medical practitioner, and help Soldiers in need. 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.

(5) The applicant contends maintaining an employment with Publix. The Board considered this contention and determined that the applicant's maintaining employment with Publix does not outweigh the misconduct based on the seriousness of the applicant's offense of failing to obey an NCO on multiple occasions, making a false official statement, and having an inappropriate relationship with another Soldier's spouse.

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 because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD and TBI did not excuse or mitigate the offenses of failure to obey a commissioned officer on two separate occasions, making a false official statement, and having an inappropriate relationship with a married person. The Board also considered the applicant's contention regarding being unable to receive the assistance sought and not being permitted to visit the aide station after redeployment and found that totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001705**

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as 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:**

1/17/2024

**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