

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, the American Red Cross notified the applicant's unit when the grandmother became terminally ill, but the unit denied the applicant's leave request, so the applicant left anyway. The unit responded by sending the Marshals to apprehend the applicant and return the applicant to military control. The applicant's grandmother died shortly thereafter. The applicant contends not having any downtime following the deployment from Iraq and went straight to Nursing School at Fort Gordon. The applicant further contends suffering from PTSD and being awarded a disability rating of 70 percent from the VA for service-connected PTSD. The applicant states PTSD was the reason for the poor decision to go AWOL. The applicant contends military service would have been exemplary if it were not for PTSD.

b. Board Type and Decision: In a records review conducted on 5 October 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: Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 10 April 2009**c. Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 8, 13 July 2007, on 24 April 2007, the applicant was charged with the following:

Charge I, in violation of Article 86:

Specification 1: On or about 19 June 2006, without authority, fail to go at the time prescribed to appointed place of duty. Plea: Not Guilty. Finding: Dismissed.

Specification 2: On or about 5 July 2006, without authority, fail to go at the time prescribed to appointed place of duty. Plea: Guilty. Finding: Guilty.

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Specification 3: On or about 22 August 2006, without authority, absent oneself from unit, and did remain so absent until on or about 23 August 2006. Plea: Guilty, Finding Guilty, except the words absent oneself from unit, and did remain so absent until on or about 23 August 2006.

Specification 4: On or about 3 October 2006, without authority, absent oneself from unit, and did remain so absent until on or about 4 October 2006. Plea: Guilty, Finding Guilty, except the words absent oneself from unit, and did remain so absent until on or about 4 October 2006.

Charge II, in violation of Article 91. Specification: Having received a lawful order from 1SG A., to sign in every hour between 1700 and 2200 on duty days and 0900 and 2200 on non-duty days, and have the Staff Duty NCO countersign signature, an order which it was his duty to obey, did, at or near Fort Gordon, Georgia, on or about 8 and 9 October 2006, willfully disobey the same. Plea: Guilty. Finding: Guilty.

Charge III, Article 92.

Specification 1: Having knowledge of a lawful order issued by LTC S., on or about 25 September 2006, fail to obey the same by wrongfully having a guest stay in the barracks room between the hours of 2400 and 0800. Plea: Not Guilty. Finding: Dismissed.

Specification 2: Having knowledge of a lawful order issued by LTC P., on divers' occasions between on or about 31 July 2006 and 22 November 2006, fail to obey the same by wrongfully driving a motor vehicle on Fort Gordon. Plea: Guilty. Finding: Guilty, except for the words "or near."

Charge IV, Article 107.

Specification 1: On or about 10 October 2006, with intent to deceive, present an official statement, to wit: an individual sick slip, DD Form 689, which DD Form 689 was false in which M., had not placed the applicant on quarters, and was then known by the applicant to be so false. Plea: Guilty. Finding: Guilty.

Specification 2: On or about 9 October 2006, with intent to deceive, present an official record, to wit: various times between 0900 and 2200 and signature on a company sign-in roster, which dates, and times were false, in which the applicant did not sign in at the times indicated and instead signed for all times at 1135 hours on 9 October 2006, and was then known by the applicant to be so false. Plea: Guilty. Finding: Guilty.

Charge V, Article 123a, Specification: On or about 15 September 2006, with intent to deceive and for the payment of a past due obligation, to wit: a personal loan, wrongfully and unlawfully utter to Colonial Finance Company, a certain check for the payment of money upon Wachovia Bank, in words and figures as follows. to wit: "One Hundred and Eighty Dollars" and "180.00," and knowing would not have sufficient funds. Plea: Guilty Finding Guilty.

Additional Charge I, Article 86. Specification: On or about 26 December 2006, without authority, and with intent to remain away there from permanently, absent oneself from unit, and did remain so absent in desertion until the applicant was apprehended on or about 9 March 2007. Plea: Guilty, except the words, "and with the intent to remain away therefrom permanently" and "in desertion," and was apprehended. Finding: Guilty, except the words, "and with the intent to remain away therefrom permanently" and "in desertion," and "was apprehended."

Additional Charge II, Article 121:

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Specification 1: On or about 20 October 2006, steal one Ralph Lauren Romance perfume, one Calvin Klein Euphoria perfume, two pair of silver dangling earrings and two pair of AO sunglasses, of a total value of \$178.10, the property of AAFES Base Exchange. Plea: Guilty. Finding: Guilty.

Specification 2: On or about 23 December 2006, steal one Childs Gold Heart Set, one Childs Pearl Set, three Compact Discs and two DVDs of a total value of \$155.65, the property of AAFES Post Exchange. Plea: Guilty. Finding: Guilty.

(2) Adjudged Sentence: Reduction to E-1; to be confined for 120 days, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 13 July 2007 / Only so much of the sentence, a reduction E-1, confinement for 90 days, and a bad conduct discharge was approved and except for the part of the sentence extending to a bad conduct discharge would be executed. The applicant was credited with 46 days of confinement towards the sentence to confinement.

(4) Appellate Reviews: The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 15 January 2009

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 September 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 28 / NIF / High School Graduate / 111

c. Highest Grade Achieved / MOS / Total Service: E-5 / 68W20, Health Care Specialist / 12 years, 6 months, 13 days

d. Prior Service / Characterizations: ARNG, 11 February 1997 – 13 June 2001 / HD
RA, 14 June 2000 – 22 September 2004 / HD

e. Overseas Service / Combat Service: None / The applicant's DD Form 4 (Enlistment/Reenlistment Document) reflects the applicant reenlisted while serving in Iraq. The period of service is not in the file.

f. Awards and Decorations: ARCOM, AAM-4, NDSM, GWOTSM, GWOTEM, ASR, CMB

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

FG Article 15, 26 June 2006, for leaving place of duty on 8 and 15 March 2008; Failing to go at appointed place of duty 8 and 15 March 2006. Fail to go at the time prescribed to appointed place of duty on 13 March and 2 June 2006. Disobey a lawful order on three occasions between 14 March and 2 June 2006. For wrongfully intending to defraud and for the procurement of lawful currency on or about 1 April and 7 April 2006. The punishment consisted of a reduction to E-4; forfeiture of \$1,009 pay per month for two months and extra duty for 45 days.

General Officer Memorandum Of Reprimand 31 August 2006, reflects the applicant was reprimanded for misconduct on 6 July 2006, when the applicant operated a motor vehicle while under the influence of alcohol. The applicant was stopped by authorities in Richmond County, Georgia, for speeding at the rate of 82 miles per hour in a 55 mile per hour zone. During the traffic stop, the odor of alcoholic beverages was detected emitting from the applicant, and the applicant failed a series of field sobriety tests. The applicant was administered a breathalyzer test resulting in a reading of .083 percent Blood Alcohol Content.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From "PDY" to "AWOL," effective 26 December 2006;
From "AWOL" to "DFR," effective 25 January 2007 and
From "CMA" to "PDY," effective 23 May 2007.

i. Lost Time / Mode of Return: 4 months, 26 days:

AWOL, 26 December 2006 – 7 March 2007 / Apprehended by Civil Authorities
CMA, 8 March 2007 – 22 May 2007 / Release from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: A Department of Veterans Affairs Decision letter, 28 May 2015, reflects an evaluation of 70 percent for PTSD.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149 and a VA Rating Decision letter.

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), dated 25 September 2019, 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. A characterization of under

honorable conditions may be issued only when the reason for separation specifically allows such characterization.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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-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 applicant's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends suffering from PTSD, and it was the reason the applicant went AWOL. The applicant provided a Department of Veterans Affairs Decision letter, 28 May 2015, reflects an evaluation of 70 percent for PTSD. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. The AMHRR is void of a mental status report.

The applicant contends the rank of E-5 should be restored. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for PTSD, which provides partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, the applicant's FTRs, AWOLs, desertion, and not signing in every hour when ordered to do so are mitigated. However, there is no natural sequela with PTSD and any of the remaining misconduct, to include falsifying records, driving on base when ordered not to do so, writing a check with insufficient funds, and theft since PTSD does not interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the applicant's medically unmitigated offenses of falsifying records, driving on base when ordered not to do so, writing a check with insufficient funds, and theft.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD, and it was the reason the applicant went AWOL. The Board liberally considered this contention and determined the PTSD did mitigate the AWOL offense. However, the available evidence did not support a conclusion that the applicant's PTSD outweighed the unmitigated offenses of falsifying records, driving on base when ordered not to do so, writing a check with insufficient funds, and theft.

(2) The applicant contends the rank of E-5 should be restored. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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 did not outweigh the medically unmitigated offenses of falsifying records, driving on base when ordered not to do so, writing a check with insufficient funds, and theft. The Board also considered the totality of the applicant's record and determined that it does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's

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consideration. 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.

(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:

1/2/2024

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