

1. Applicant's Name:**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** Yes**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 with a narrative reason of "Secretarial Authority." The applicant, through counsel, requests a narrative reason change to "Secretarial Authority."

The applicant seeks relief contending, in effect, enlisting in 2009 and being discharged after three years of faithful service as an 11B, Infantryman. After completing initial training, the applicant was assigned at Fort Stewart and volunteered to join the applicant's unit which was in Iraq. The applicant was deployed from December 2009 to October 2010 and received various awards. Midway through the deployment, the applicant's supervisor assaulted the applicant for refusing to continue to obey an unlawful order. The applicant reported the incident to a noncommissioned officer (NCO), with no substantial results, which became a trend of the command's failure to address key issues and led to the applicant's distrust of superiors. The applicant became a target for bullying within the unit. The bullying, lost confidence, and the emotional effects of combat made it difficult to transition back to Fort Stewart. The applicant began to experience the symptoms of post-traumatic stress disorder (PTSD), such as insomnia, anxiety, depression, and increased alcohol use. The applicant sought medical assistance and was eventually prescribed medications, which caused drowsiness, the applicant to oversleep, and failure to report to the assigned place of duty on several occasions. The chain of command had the responsibility to determine the underlying cause for the misconduct, but chose to punish the applicant, repeatedly. The applicant was punished and the applicant's pay was stopped from October 2012 through January 2013. In July 2012, the applicant pleaded with supervisors for time to visit Behavioral Health (BH). A month later, the applicant had an appointment with BH and informed the leadership of the applicant's mental health concerns.

In September 2012, the provider noted the applicant had an anxiety disorder and homicidal thoughts and scored positive for PTSD. Despite the findings and the prescriptions, which caused drowsiness, the applicant was forced to perform extra duty until 2300 hours, guaranteeing the applicant's failure to report to morning formations, and exacerbated the applicant's overall mental health. The applicant relied solely on the monthly pay for basic necessities. It was humiliating when the leadership ordered another Soldier to ensure the applicant received the regulatory haircuts. The applicant was shunned and further bullied by peers. The applicant was discharged for missing formations and believes two of the reasons are directly related to the chain of command's inability to appropriately respond to the applicant's deteriorating mental health. The applicant was arrested for simple battery, but was never charged because of unsubstantiated allegations. The Army weighed the evidence in a light most unfavorable to the applicant. The applicant was diagnosed with PTSD by a Department of Veterans Affairs (VA) and treated with prescription medications. The medications have helped, but the applicant has struggled to maintain employment and consistently seeks self-improvement. The applicant is pursuing VA benefits and hopes to re-earn the GI Bill education benefits. The applicant was recently awarded full custody of the applicant's child.

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: Secretarial Authority / AR 635-200, Paragraph 5-3 / JFF / RE-3 / Honorable

b. Date of Discharge: 28 January 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 7 December 2012

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

On multiple occasions between 30 April and 15 November 2012, failed to go to the appointed place of duty;

On 1 May 2012, on multiple occasions, the applicant was disrespectful to a senior NCO;

On 29 June 2012, the applicant was unable to properly perform the duties; and

On 15 May 2012, the applicant was arrested for simple battery.

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

(4) Legal Consultation Date: 17 December 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 7 January 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 July 2009 / 4 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 105

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 6 months, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (1 December 2009 – 1 October 2010)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Army Substance Abuse Program (ASAP) Enrollment form, 29 June 2012, reflects the applicant was command-referred in the ASAP for two alcohol-related incidents within 12 months.

Company Grade Article 15, 30 July 2012, for:

On five occasions failing to go at the time prescribed to the appointed place of duty (30 April (two occasions), 1 May, 29 June, and 2 July 2012);

On two occasions, being disrespectful in language toward First Sergeant S. G., a senior noncommissioned officer (1 May 2012); and

As a result of wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of the duties (29 June 2012).

The punishment consisted of a reduction to E-3; forfeiture of \$462 pay; and extra duty and restriction for 14 days.

Field Grade Article 15, 4 October 2012, for on four occasions, failing to go at the time prescribed to the appointed place of duty (23 and 30 July and 1 and 7 August 2012). The punishment consisted of a reduction to E-1; forfeiture of \$745 pay per month for two months; extra duty and restriction to Fort Stewart for 45 days; and an oral reprimand.

Numerous Developmental Counseling Forms, for but not limited to:

Failure to report on multiple occasions and the applicant responded the applicant had issues with sleep deprivation;

Potential dishonesty;

Missed Behavioral Health;

Disrespect to a senior NCO;

Arrested for simple battery against the applicant's significant other or spouse;

No Contact Order from the commander and civilian authorities;

Suspension of pass privileges;

Pattern of misconduct; and

Initiation of separation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Report of Mental Status Evaluation, 4 September 2012, reflects the applicant required further evaluation of symptoms to determine fitness for duty and appropriateness for administrative separation. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD, with a positive result, and mTBI with a negative result. The applicant was diagnosed with: Anxiety Disorder, not otherwise specified, rule out PTSD.

Medical Record – Respect – Mil Primary Care Screening, 20 September 2012, reflecting the applicant's depression and PTSD screens results were positive according to the applicant's answers.

Chronological Record of Medical Care, 21 September 2012, reflecting the applicant was diagnosed with anxiety; alcohol abuse; adjustment disorder with anxious mood; and adjustment disorder with anxiety.

Report of Medical Examination, 25 October 2012, the examining medical physician noted in the summary of defects and diagnosis section: PTSD; depression; anger; and currently in Behavioral Health.

Report of Mental Status Evaluation, 27 November 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI) with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Adjustment disorder with anxiety.

Department of Veterans Affairs (VA) medical records, between 13 July 2016 and 11 August 2016, reflecting the applicant reported and being bullied and harassed by members of the unit. The applicant was diagnosed with PTSD; oppositional defiant disorder, provisional; alcohol use disorder, moderate; rule out cluster B.

(2) AMHRR Listed: MSEs and Report of Medical Examination as described in previous paragraph 4j(1).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; two DD Forms 293; attorney letter; Legal Brief with all listed exhibits A through E; self-authored statement; military personnel records, including separation documents; military medical records; VA medical records; and Kurta Memorandum.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is receiving treatment for mental health issues, consistently seeks self-improvement, and has gained full custody of the applicant's child.

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) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1, states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(5) Chapter 5-3 (Chapter 15 current regulation) provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided 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 identified the SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-3, Secretarial Authority.

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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 5-3, AR 635-200, with an honorable discharge. The narrative reason specified by Army Regulations, at the time, for a discharge under this paragraph is "Secretarial Authority," and the separation code is "JFF." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends PTSD affected behavior which ultimately led to the discharge. The applicant provided several medical documents from the military service and the VA, reflecting the applicant was diagnosed with adjustment disorder with anxiety; adjustment disorder with anxious mood; PTSD; oppositional defiant disorder; and alcohol use disorder. The Report of Medical Examination, 25 October 2012, reflects the examining medical physician noted: PTSD;

anger; and currently in Behavioral Health. The Report of Mental Status Evaluation, 27 November 2012, reflects the applicant was mentally responsible and was able to recognize right from wrong. The applicant was screened for PTSD and mTBI, with negative results and diagnosed with adjustment disorder with anxiety. The VA diagnosed the applicant with PTSD; oppositional defiant disorder, provisional; and alcohol use disorder, moderate; rule out cluster B. The applicant's AMHRR contains the MSE and medical examination as mentioned above. The MSE and medical examination were considered by the separation authority.

The applicant contends harassment by members of the unit. The Board considers the entirety of the evidentiary record, including personal statements/assertions which may reflect actions taken to report harassment/hazing.

The applicant contends the leadership had a responsibility to appropriately respond to the applicant's mental health issues but instead punished the applicant. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends receiving treatment for mental health issues, consistently seeking self-improvement, and gaining full custody of the applicant's child. 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 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety, Depression. Additionally, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

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

applicant's asserted PTSD is substantiated by documented symptoms of PTSD in service, and the VA's post-service diagnosis of the condition.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** 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 an Adjustment Disorder, Anxiety, and Depression. The VA has service-connected the applicant's Chronic Adjustment Disorder. The applicant's asserted PTSD is substantiated by documented symptoms of PTSD in service, and the VA's post-service diagnosis of the condition. The applicant's BH conditions provide partial mitigation for the basis of separation. Given the nexus between PTSD, Depression, avoidance, and self-medicating with substances, the applicant's FTRs and being unable to perform duties due to overindulgence in substances are mitigated. And given the nexus between PTSD and difficulty with authority, the disrespect offense is also mitigated. The arrest for simple battery is not mitigated due to no natural sequela with an Adjustment Disorder, Anxiety, Depression, or PTSD.

(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 applicant's BH conditions did not mitigate the totality of the misconduct that served as the basis of separation. Specifically, the Board determined that the simple battery offense was not mitigated. However, the applicant already has an Honorable discharge characterization.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined the current characterization of service is honorable with a narrative reason of Secretarial Authority. There is no further relief available. The reentry eligibility (RE) code is proper and equitable due to applicant's BH conditions warranting consideration prior to reentering military service.

(2) The applicant contends PTSD affected behavior which ultimately led to the discharge. The Board considered this contention and determined the current characterization of service is honorable with a narrative reason of Secretarial Authority. There is no further relief available.

(3) The applicant contends the leadership had a responsibility to appropriately respond to the applicant's mental health issues but instead punished the applicant. The Board considered this contention but did not address it in detail due to a previous AMC MR's upgrade. The current evidentiary record did not contain evidence of ill intent or actions by the command.

(4) The applicant contends good service, including a combat tour. The Board considered this contention and determined that a previous ABCMR upgraded the discharge accordingly.

(5) 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 does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

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

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(7) The applicant contends receiving treatment for mental health issues, consistently seeking self-improvement, and gaining full custody of the applicant's child. The Board considered this contention and determined that a previous ABCMR upgraded the discharge accordingly.

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 issues before a 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 determined the discharge is proper and equitable as a prior ABCMR upgraded the discharge to Honorable, Secretarial Authority. No further relief is available.

(2) The RE code will not change, as the current code is proper and equitable due to the applicant's BH conditions.

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:

4/10/2024

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