

**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 and a narrative reason change to "Hardship."

The applicant seeks relief contending, in effect, the discharge was both inequitable and improper because it was based on a single isolated incident with no other adverse actions. This single isolated incident occurred because of arbitrary, capricious, discrimination and abuse of authority taken against the applicant by the chain of command. The applicant states being oppressed and persecuted out of the unit solely for being a black person who qualified to upgrade oneself to become a commissioned officer in the United States Army, but the all-white chain of command hated to see this happen. The applicant contends the so-called absence without authorization incident was completely out of the applicant's nature and character as an outstanding, well-disciplined, hardworking, and highly professional Soldier of the United States Army. The applicant has a bachelor's degree from an accredited university and was 31 years old at the time of the incident and cared for a family. The applicant served with the utmost military bearing and with excellence and volunteered to help other Soldier's complete tasks to help achieve overall organizational goals with no incident or other adverse action until this, unjust discharge. The applicant states not being afforded the proper time to clear installation prior to separation, which has continued to cause hardship.

**b. Board Type and Decision:** In a records review conducted on 13 June 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 12 March 2012

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 20 January 2012

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant was AWOL from 20 April 2010 to 9 February 2011, for which the applicant received a Field Grade Article 15.

**(3) Recommended Characterization:** General (Under Honorable Conditions) / The intermediate commander recommended an under other than honorable conditions discharge.

**(4) Legal Consultation Date:** 30 January 2012

**(5) Administrative Separation Board:** NIF / The applicant's AMHRR is void of any administrative separation board proceedings or a waiver of such proceedings.

**(6) Separation Decision Date / Characterization:** 14 February 2012 / General (Under Honorable Conditions) / The separation authority's decision memorandum does indicate the acceptance of any administrative separation board recommendations, or the approval of any waiver of the administrative separation board proceedings submitted by the applicant.

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 12 February 2009 / 3 years, 23 weeks

**b. Age at Enlistment / Education / GT Score:** 30 / Bachelor's Degree / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92A10, Automated Logistical Specialist / 2 years, 3 months, 11 days

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

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

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

From "PDY" to "AWOL," effective 20 April 2010.

From "AWOL" to "DFR," effective 20 May 2010.

From "DFR" to "RMC," effective 9 February 2011.

From "RMC" to "PDY," effective 14 February 2011.

Charge Sheet, dated 1 September 2010, reflects the applicant was charged with: Violation of the UCMJ, Article 85, for without authority absencing oneself from unit in desertion 20 May 2010; and violation of the UCMJ, Article 86, for without authority absent oneself from unit 20 April 2010.

Mental Status Evaluation, dated 9 March 2011, reflects the applicant has the mental capacity to understand and participate in the proceedings. Meets the retention requirements of Chapter 3, AR, 40-501. Command indicates Service Member (SM) went AWOL. SM has no history of psychiatric disorders, prior outpatient mental health treatment, prior substance rehabilitation or inpatient psychiatric treatment. SM states at the time the applicant went AWOL was experiencing extreme distress associated with what the applicant believed was discrimination by the command. The applicant states became depressed and does not believe was fully aware of the choices the applicant was making. At the time of this assessment, SM states all these symptoms have resolved and describes oneself as calm and accepting of the situation. SM denied SI/HI. SM completed scales for PTSD and TBI. The SM did not indicate experiencing any symptoms of PTSD or TBI. This individual meets the retention standards prescribed In AR

40-501, and there is no psychiatric disease or defect which warrants disposition through medical channels. SM is cleared for any administrative actions deemed appropriate by command.

FG Article 15, dated 1 November 2011, on or about 20 April 2010, without authority absent oneself from unit until 9 February 2011. The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months and extra duty and restriction for 45 days (suspended).

**i. Lost Time / Mode of Return:** 9 months, 20 days (AWOL, 20 April 2010 – 9 February 2011) / Returned to Military Control

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

**(1) Applicant provided:** Medical records, dated 13 January 2012, reflect a diagnosis of Adjustment disorder with anxiety; Major Depression recurrent and Occupational problem.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, dated 19 October 2011, 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 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: Occupational Problem. The service member may participate in PT as allowed by physical profile, as exercised often improves mood. Service member has been screened for substance use disorders (alcohol and drugs). SM denied substance abuse. SM was evaluated at the Soldier Readiness Center to rule out a mental health issue which would warrant consideration of mental illness which amounts to a disability separation under AR 635-40. SM was cleared from a mental health perspective for administrative/disciplinary action.

Report of Medical History and Examination, dated 20 October 2011, the examining medical physician noted in the comments section: depress about problems with unit.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; self-authored letter with listed Exhibits 1 through 45. Green to Gold Application; military medical record; counseling statements attesting to good character; army Equal Opportunity Memoranda in accordance with AR 600-20; coercively edited memorandum; evidence of false, misleading and improper caption on discharge paperwork; evidence of no criminal record/clean state and federal background check report; several recommendations/character references; and achievements/awards received.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has earned a bachelor's degree, Master of Public Administration and Graduate Certificate in Project Management and six awards. The applicant states, in effect, that since his discharge he has accomplished the following: Master of Public Administration degree awardee with concentration in Public Policy & Management (18 December 2015), Graduate Certificate in Project Management (18 December 2015), Outstanding Graduate Student Award (8 May 2015), Master of Public Administration Program Liaison Officer & Ambassador Award (8 May 2015), The Graduate School Excellent Service Award (15 May 2015), National Honor Society of Leadership and Success inductee and Presidential Award (5 December 2014), The PhD Project Conference Selectee/Sponsored Participant, O'Hare Chicago (19 - 21 November 2014), University of Ghana Business Development and Sustainability Conference Sponsored Participant, University of Ghana, Accra, Ghana Africa (29 – 31 July 2014), University of Baltimore School of Law LSAT Scholarship

Program - Selected Recipient (12 December 2014 for Fall 2016 Law School Enrollment, and Graduate Assistantship Excellence Award (18 December 2015).

#### **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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

**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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

**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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 contends the narrative reason for the discharge needs changed to "Hardship." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8, Separation Processing and Documents, governs the 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 the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5c states that circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends that the single isolated incident occurred because of arbitrary, capricious, discrimination and abuse of authority taken against the applicant by the chain of command. The applicant states being oppressed and persecuted out of the unit solely for being a black person who qualified to upgrade oneself to become a commissioned officer in the United States Army, but the all-white chain of command hated to see this happen. The applicant provided Medical records, dated 13 January 2012, reflecting a diagnosis of Adjustment disorder with anxiety; Major Depression recurrent and Occupational problem. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command. The evidence shows the applicant went AWOL for 295 days.

The applicant contends good service.

The third-party statements provided with the application speak highly of the applicant and recognize the applicant's good conduct after leaving the Army.

The applicant contends earning a bachelor's degree, Master of Public Administration and Graduate Certificate in project Management and six awards obtaining employment and volunteering in the community. 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.

The applicant contends that the applicant's AWOL was completely out of the applicant's overall nature and character as an outstanding, well-disciplined, hardworking, and highly professional stellar Soldier of the United States Army with a bachelor's degree from an Accredited University at the age of 31 with a family the applicant was supporting. The applicant contends that the applicant served with the utmost military bearing and excelled at the applicant's MOS. The applicant contends that the applicant constantly volunteered outside the applicant's MOS as reflected in the applicant's provided counseling statements to help other Soldiers complete tasks and achieve overall organization goals without incident or adverse action until the applicant's sudden discharge approximately three months prior to the applicant's ETS.

The applicant contends the applicant's discharge was improper because the applicant was clearly told verbally and provided a monthly counseling dated 3 January 2012 that the applicant would not be discharged but the applicant would be transferred to another unit. The applicant provided evidence of a counseling statements indicating that the applicant would not be discharged.

The applicant contends that the applicant suddenly received orders on 5 March 2012 with instructions to clear the installation within five (5) business days denying the applicant ACAP, dental review, exit medical examination, and exit counseling that resulted in an unjust and undeserved hardship that has impacted the applicant and the applicant's family. The applicant's AMHRR reflects a DD Form 2648 dated 8 March 2012 reflecting comments in Block 27 that the "Chain of Command don't care to allow time for ACAP."

#### 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: depression/anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was treated for mood (anxiety and depression) related concerns on active duty.

(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 has asserted psychological trauma and emotional distress associated with circumstances of discharge, and there is evidence of depressed and anxious mood during service per medical records, to include one encounter with a diagnosis of Major Depressive Disorder. Although appreciating the perceived difficult circumstances described by the applicant, the advisor opines that after a review of records at the time of service/misconduct/discharge, the evidence appears more consistent with a diagnosis of adjustment disorder in the context of occupational concerns rather than Major Depressive Disorder at the time of service. There is no evidence his psychiatric impairment at the time of the misconduct rose to a level of severity as to mitigate the AWOL leading to discharge.

**(4)** Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's depression and anxiety outweighed the basis for applicant's separation – AWOL – for the aforementioned reason(s).

**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 applicant's narrative reason for discharge is appropriate as the applicant's length of service and post service accomplishments do not outweigh the applicant's misconduct. 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.

**(2)** This single isolated incident occurred because of arbitrary, capricious, discrimination and abuse of authority taken against the applicant by the chain of command. The Board considered this contention and determined there is insufficient evidence to support the applicant experienced arbitrary, capricious, discrimination and abuse of authority by the chain of command. 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 good service. The Board considered the applicant's 2 years of service and numerous awards received by the applicant but determined that these factors did not outweigh the applicant's 9 months, 20 days of being AWOL.

**(4)** The applicant contends earning a bachelor's degree, Master of Public Administration and Graduate Certificate in project Management and six awards obtaining employment and volunteering in the community. The Board considered this contention and determined that the applicant earning a bachelor's degree, Master of Public Administration and Graduate Certificate in project Management and six awards obtaining employment and volunteering in the community do not outweigh the misconduct based on the seriousness of the applicant's offense of 9 months, 20 days of being AWOL.

**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 depression and anxiety did not excuse or mitigate the offenses of being AWOL for 9 months, 20 days. The Board also considered the applicant's contention regarding having experienced arbitrary, capricious, discrimination and abuse of authority by the chain of command 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



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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.

(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:**

1/16/2024

**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