

**1. Applicant's Name:**

- a. **Application Date:** 28 September 2020
- b. **Date Received:** 13 October 2020
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general honorable conditions. The applicant requests an upgrade to honorable and a change in their reentry code.

(2) The applicant seeks relief stating they would like to be able to use the Montgomery GI Bill for college, whenever they come home from prison. They would also like to receive Department of Veterans Affairs (VA) medical benefits.

(3) They know they have made mistakes during their service and after their discharge from the Army. Going to prison was the best thing that could have happened to them as it took them having to sit down and thinking about their life and the mistakes and choices they made.

**b. Board Type and Decision:** In a records review conducted on 31 January 2024, 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 / Army Regulation 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 2 October 2007

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 18 September 2007

**(2) Basis for Separation:**

- received Summarized Article 15 for disrespect to a noncommission officer (NCO) on two occasions
- received a Field Grade Article 15 for disrespect to an NCO on three occasions and failure to report on two occasions
- a vacation of suspension for breaking restriction
- several counseling statements for various acts of misconduct

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

**(4) Legal Consultation Date:** 19 September 2007

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

**(6) Separation Decision Date / Characterization:** 20 September 2007 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 6 July 2006 / 4 years

**b. Age at Enlistment / Education / GT Score:** 17 / HS Graduate / 100

**c. Highest Grade Achieved / MOS / Total Service:** E-2 / 25U1O, Signal Support System Specialist / 1 year, 2 months, 27 days

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

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

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** Four DA Forms 4856 (Developmental Counseling Form), dated 23 May 2007 through 25 June 2007, reflects the applicant received event-oriented counseling for various acts of misconduct to include disrespect to an NCO on multiple occasions and domestic violence.

**(2)** A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 16 July 2007, reflects the applicant received nonjudicial punishment for, on or about 1 May 2007, and 17 May 2007, was disrespectful in language toward a superior NCO. Their punishment was not in evidence for review. The applicant elected not to appeal.

**(3)** Four DA Forms 4856, dated 20 July 2007 through 8 August 2007, reflects the applicant received event-oriented counseling for various acts of misconduct of multiple occurrences of failure to report

**(4)** A Mental Status Evaluation, dated 10 August 2007, reflects the applicant received a mental status evaluation as they are being considered for discharge because of misconduct.

**(a)** In Section III (Impression) reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements.

**(b)** Item 10, shows, according to the applicant, they have not been able to adjust to anyone of a higher rank talking down to him and this attitude has subsequently let to a pattern of misconduct as noted by their command. According to the applicant's command, the applicant is no longer compatible with Army standards of behavior due to their repeatedly showing disrespect to anyone senior to them. The applicant is determined to be competent at this time and capable of understanding the consequences of their actions in line with their being separated from the Army through the chapter process.

(c) Item 11 reflects the applicant's diagnosis of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.

(5) Six DA Forms 4856, dated 16 August 2007 through 30 August 2007, reflects the applicant received event-oriented counseling for various acts of misconduct to include multiple occurrences of failure to report and received notification of separation under Army Regulation 635-200, paragraph 14-12b, for pattern of misconduct.

(6) A DA Form 2627, dated 6 September 2007, reflects the applicant receive nonjudicial punishment, for three occurrences of disrespectful in deportment towards NCOs on 22 June 2007 and two occurrences of failure to go at the time prescribed to their appointed place of duty, on or about 20 July 2007 and 31 July 2007. The applicant's punishment consisted of a reduction from the rank/grade of private two/E-2 to private/E-1, forfeiture of \$650.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(7) Three DA Forms 4856, dated 11 September 2007 through 17 September 2007, reflects the applicant received event-oriented counseling for breaking their nonjudicial punishment restriction and three occurrences of failure to report.

(10) A memorandum, Headquarters and Headquarters Company (Rear Detachment), 4th Brigade, 3rd Special Troops Battalion, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Patterns of Misconduct, dated 18 September 2007, notified the applicant of initiating actions to separate them for a Pattern of Misconduct as described above in paragraph 3c(2). On the same day the applicant acknowledged the basis for the separation and of the rights available to them.

(11) On 19 September 2007, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to submit a statement on their behalf (Note: the applicant's statement is not in evidence for review). They understood that as the result of issuance of a discharge under other than Honorable conditions, they may be ineligible for many or all benefits as a veteran under both federal and state laws and that they may expect to encounter substantial prejudice in civilian life.

(12) A memorandum, Headquarters and Headquarters Company (Rear Detachment), 4th Brigade, 3rd Special Troops Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Patterns of Misconduct, dated 19 September 2007, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service, stating, further attempts of rehabilitation are not in the best interests of the U.S. Army; and, therefore, request the rehabilitative transfer be waived. The applicant clearly has no potential for useful service under the conditions of full mobilization and should not be transferred to the Individual Ready Reserve.

(13) A memorandum, Headquarters, 4th Brigade, 3rd Infantry Division, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, dated 20 September 2007, the separation authority directed that the applicant be separated from the U.S. Army prior to the expiration of their current term of service and their service will be characterized as General (Under Honorable Conditions).

(14) On 2 October 2007, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 1 year,

2 months and 27 days of net active service this period and did not complete their first full term of service obligation of 4 years.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(4).

5. **APPLICANT-PROVIDED EVIDENCE:** None

6. **POST SERVICE ACCOMPLISHMENTS:** none submitted with application.

7. **STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) 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.

(2) 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.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as

otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil 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 UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

**(6)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

**(7)** Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

**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 DoD Instructions 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:

**(1)** RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

**(2)** 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.

**(3)** 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):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant's AMHRR reflects they received multiple counseling and nonjudicial punishment under the provisions of Article 15, UCMJ, for various acts of misconduct. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions). They completed 1 year, 2 months and 27 days of net active service; however, they did not complete their 4-year contractual enlistment agreement obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

## 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: the applicant held an Adjustment Disorder diagnosis with ongoing assessment for Personality Disorder in-service. The applicant was attending FAP for IPV with possible child involvement. The applicant is service connected for an Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an Adjustment Disorder diagnosis with ongoing assessment for Personality Disorder in-service. The applicant was attending FAP for IPV with possible child involvement.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that although it is more likely than not the applicant's misconduct was characterological, per medical guidance a service-connected Adjustment Disorder can mitigate disrespect, FTR, and breaking restriction. However, IPV is not mitigated.

(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 Adjustment disorder outweighed the medically unmitigated IPV offenses.

**b. Response to Contention(s):**

**(1)** The applicant contends stating they would like to be able to use the Montgomery GI Bill for college, whenever they come home from prison. 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.

**(2)** The applicant contends stating they would like to receive VA medical benefits. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had an unmitigated basis for separation.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Adjustment Disorder did not outweigh the medically unmitigated offenses of IPV offenses. 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.

**(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.



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

**AR20210005729**

**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:**

2/8/2024

**X**

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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