

1. Applicant's Name: [REDACTED]

a. Application Date: 12 October 2020

b. Date Received: 20 October 2020

c. Counsel: None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, they joined the military as a PV2 (due to college) in August 2012 as a 15B (Aircraft Powerplant Repair). They graduated basic from Fort Jackson, SC in October 2012 and went to AIT in Fort Eustis, VA from November 2012 to May 2013 and was promoted to PFC. Their first duty station was at Fort Hood, TX in 1 Cav 1 ACS B Co 615th. They were a good soldier who never got into trouble, passed all of their classes, PT tests, and shot expert. When they were in AIT, the applicant started dating another Soldier. When the applicant went to their first duty station, the Soldier was still in AIT. The two of them exchanged inappropriate pictures back and forth. The Soldier left their phone on the bed and the roommate saw the picture of the applicant. The roommate reported it to the drill sergeants even though their partner did not want them to. Their first unit was contacted, and about four months after arriving to Fort Hood, they received an Article 15, lost rank (SPC to PVT, promoted three months after being at their unit), lost pay, and 45 days extra duty.

(1) Afterwards, the applicant stopped all contact with the Soldier and got back on track. They started going to college, PTing twice a day, and always showed up to the right place, at the right time, in the right uniform. Their unit treated them well and had no issues once the applicant was back on track. One year later, the applicant was recommended by doctors to med board due to their knees. Once their doctor contacted their commander, the applicant was informed they would be chaptered due to the incident that happened a year ago. Then they started treating them differently. For example, instead of doing their job, they had the applicant cutting grass on the airfield every single day.

(2) Once the applicant found out their command was dishonorably discharging them, they went to JAG for counseling and was informed of their eligibility for a review board for a dishonorable characterization. The applicant went in front of the board three weeks after the chapter was initiated. They were supposed to send the applicant with their E-7 platoon sergeant but instead sent them with their squad leader. At the board, the members proceeded to ask their squad leader questions about the applicant and their squad leader painted a picture of them being a horrible soldier. Once they reviewed the applicant's monthly counseling's, the board saw the applicant was flagged for height and weight due to their knee injury. They also saw that the applicant was going to the gym with their team leader for an hour every day before PT to try to lose the weight. Their counseling's also stated they were in college full time and paying for it out of pocket, as they were flagged for weight. After reviewing this information, the board asked their squad leader if they were informed of all-encompassing counseling's at which the squad leader stated they were unaware the applicant was doing any of that. The board concluded that the applicant should receive a General (Under Honorable Conditions) instead.

(3) Since their discharge, the applicant moved back to their hometown, received their diploma in Machine Tool Technology in 2015, married in 2018, had their first child in 2018, their

spouse joined the Army in 2018, had another child in 2020, and adopted their child in 2020. The applicant needs their discharge upgraded to Honorable, in order to use the educational benefits to go back to school for a degree in Radiological Protection, so they can have a career and provide for their family with a better future. Additionally, the applicant feels it was unfair to have brought up a mistake they made a year prior [considering they had already paid their dues, did their time, turned their life around] and based their discharge off of that mistake and their weight, instead of their injury which kept them from being able to serve their country any longer.

c. Board Type and Decision: In a records review conducted on 12 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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: 20 November 2014

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 August 2012 / 6 years

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 105

c. Highest Grade Achieved / MOS / Total Service: E-4 / 15B10 ACFT Powerplant Rep / 1 year, 8 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR, BAB, EMB-RB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 21 August 2012, the applicant enlisted in the Regular Army for 6 years as a PV2. The Enlisted Record Brief provides on 12 February and 30 April 2014, the applicant was

flagged, Suspend Favorable Personnel Actions (FLAG), for Army Body Composition Program (ABCP) and field-initiated elimination (BA).

(2) On 10 November 2014, the applicant was issued separation orders. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 20 November 2014, with 2 years, 4 months, and 2 days. The applicant has not completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

a. DD Form 293 (Application for the Review of Discharge); Self-Authored Statement; Achievements Since Discharge; Basic Machining Certificate from Augusta Technical College; Machine Tool Technology Diploma from Augusta Technical College; Augusta Technical College Transcript; Credit Karma Credit Score Printout; Certification of Criminal History; Work History; Decree of Adoption

b. The spouse provides a support statement for the applicant, indicating they met in November 2016 and although they was not present for the years the applicant served, they can see how badly it has affected them. When they first got together, the applicant explained to the spouse what happened. In summary, the applicant enjoyed basic, loved their job, and had a great time at AIT where the applicant dated another Soldier. When the applicant went to their first duty station, the Soldier still had not graduated yet (Soldiers in the Regular Army are not allowed to date trainees). They both sent inappropriate pictures to each other and the Soldier's roommate saw this and reported them. Sexual harassment is a big deal in the Army (even playing inappropriate music too loud can constitute as sexual harassment). TRADOC told the applicant's unit and they received an Article 15, was demoted from an SPC to PVT (which is a big pay cut) and had 45 days extra duty.

(1) After this happened, the applicant stopped all contact with the Soldier and made sure to not have any more issues. About a year later, the applicant's doctor recommended med board due to the severity of their knee injury. Once their unit was told about this, the unit was upset and looked through the applicant's file, to find what they could chapter the applicant out for. They decided to bring up the applicant's weight, their inability to take the PT test, and also the incident that happened a year ago. The command wanted to dishonorably discharge them, which the applicant felt was unfair, so they fought it. The applicant went in front of a board with people who were there to smear the applicant's name. Luckily, their first line documented all the good the applicant was doing, which their other leaders knew nothing about. The applicant was then issued a General (Under Honorable Conditions) discharge.

(2) This was a blessing as the applicant was able to receive a lot of health benefits for their knees and mental health, which was developed while in the Army. After telling their spouse the story one time, the applicant never talked about it again. When the spouse bring it up, the applicant says they do not want to talk about it because it upsets them, and the applicant just wants to forget about it.

(3) When that incident happened, the applicant was only 20 years old. The spouse is sure we all have made mistakes at that age. The applicant paid their dues and should have been forgiven. The applicant also had no one there for them, to help them realize that what the command was discharging them for and how they were treating the applicant, was not right. The applicant is now 27 years old, an amazing spouse (they quit their job in order for the spouse to join the Army and have a career and they could be at home with three small children), and the applicant is a fantastic parent of three: four years old (the applicant adopted), two years old, and eight months old. Now the spouse is in their career and two kids going to school next year, they can afford childcare for the youngest one; it is the applicant's turn to make a career for themselves. While in the military and right after they got out, the applicant finished schooling for a degree in Machinery. The applicant now wants to go to school for Radiological Protection, to be able to provide a better life for the spouse and their kids. They are unable to afford to pay for both the spouse and the applicant to go to school, therefore upgrading the discharge to Honorable in order for the applicant to use the GI bill would mean the world to their family and could change their lives forever.

6. POST SERVICE ACCOMPLISHMENTS: The applicant earned their certificate in Basic Machining and a diploma in Machine Tool Technology, received a raise, and earned employee of the month at the Cabinets company they last worked. Their child was born and the applicant started their own furniture business. The applicant adopted their child, had their third child, and paid off both of their family cars. The applicant has a 737 credit score.

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) 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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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. 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. 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.

(5) Chapter 15 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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12C, 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:

(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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

a. The applicant requests an upgrade to Honorable. A review of the record provides administrative irregularity in the proper retention of records, specifically, the AMHRR is void of the entire separation proceedings and the specific facts and circumstances concerning the events which led to their discharge, are unknown.

b. The available evidence provides the applicant enlisted in the Regular Army as a PV2. They were flagged, Suspend Favorable Personnel Actions (FLAG), for the ABCP and two

months later, for field initiated involuntary separation. Notwithstanding the lack of evidence, they were issued separation orders IAW AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) and separated with a General (Under Honorable Conditions) characterization of service.

c. AR 635-200, Chapter 14 establishes policy and prescribes procedures for separating 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 discharge 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 impeded 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 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: In-service Adjustment Disorder with Anxiety and Depressed Mood. Post-service connected for Major Depressive Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** In-service Adjustment Disorder with Anxiety and Depressed Mood which the VA and MEB found his fit for duty for, he was not service connected for BH while undergoing a MEB in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Unknown.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has offered two possible bases for separation. Given concern there is more to the basis than he asserts or has offered, mitigation cannot be determined without clarification.

(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 mitigation cannot be determined without clarification of the basis of separation.

b. Response to Contention(s):

(1) The applicant seeks relief contending, four months after they arrived at Fort Hood, they received an Article 15 and lost their rank (SPC to PVT, they were promoted three months after being at their unit). It was unfair to bring up their mistake they had made the previous year, in which they had already paid their dues and did their time and was turning their life around. The command based their discharge off that mistake and the applicant's weight, instead of their injury, which is what kept them from being able to serve their country any longer. The Board considered this contention and found not enough information in the applicant's file to make a

determination and recommended a personal appearance.

(2) The applicant contends the applicant's E-7 platoon sergeant was supposed to go with them to the review board for their characterization hearing, however, their squad leader painted a picture of them being a horrible Soldier. The Board considered this contention and found not enough information in the applicant's file to make a determination and recommended a personal appearance.

(3) The spouse, on behalf of the applicant, contends when that incident happened, the applicant was only 20 years old and all of us made mistakes at that age. The applicant paid their dues, having been demoted from SPC to PVT, the extra duty they performed; the applicant should have been forgiven. The applicant had no one there advocating on their behalf, helping them to see how they were being treated was not right. The spouse states they cannot afford to pay for both them and the applicant to go to school, so upgrading their discharge to Honorable, in order for the applicant to use the GI Bill would mean the world to their family and could change their lives forever. The Board considered this contention and found not enough information in the applicant's file to make a determination and recommended a personal appearance. Furthermore, 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.

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. While the Board acknowledges the applicant's Adjustment Disorder with Anxiety and Depressed Mood and Major Depressive Disorder. From the records and available evidence, the Board was unable to determine whether the applicant's conditions actually outweighed the applicant's discharge without the Board Medical Advisor determination on medical mitigation. Without knowing the facts and circumstances relating to the applicant's discharge, the Board is unable to determine if the applicant's behavioral health conditions outweigh the applicant's discharge.

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, there is not enough information in the applicant's file to determine the basis of separation. At this time, the Board determined 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.

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:

6/4/2024



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