

1. Applicant's Name: [REDACTED]**a. Application Date:** 11 October 2020**b. Date Received:** 27 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 Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable and a narrative reason change, along with upgrading their separation and reentry codes, however, did not provide further details in their application.

b. During their nonjudicial punishment (NJP) and separation proceedings, the applicant self-authored two statements requesting their service be characterized as General (Under Honorable Conditions) and to keep their rank, in order to maintain support for their four-month-old child living on the mainland. They apologized to SFC for their reaction and how they handled their correcting and admitted to lying about their unit. They were in a rush and SFC took it as disrespect when they did not receive an answer. SFC approached them aggressively, cursing at them, asking "What is your problem? Why are you giving me all this f*****g attitude?" The applicant lost their military bearing when they answered them with a curse word in their response and they should have handled things a lot better. They were ready for their punishment, however, requested to keep their same rank as it was hard for them to obtain, hoping to be able to continue to make their family proud and to maintain the support for their four-month-old baby, living on the mainland. The applicant desired leave to the mainland to see their baby in person for the first time and would not be able to if they are flagged. The applicant is not the person they made themselves out to be that morning and do not take criticism harshly, however, SFC's actions in approaching them, got the better of them.

c. Board Type and Decision: In a records review conducted on 1 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service factors (Length, Quality) that mitigate the applicant's misconduct (disrespect toward an NCO and false statement). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. Date of Discharge: 15 July 2019**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** NIF

(2) Basis for Separation: Pursuant to the applicant's request for voluntary discharge provision of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: 21 June 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 June 2019 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: (first reenlistment) 13 March 2017 / 4 years / Although the DD Form 4 (Enlistment/Reenlistment Document) is missing from the record, they executed a four month extension, making 12 July 2021, their new expiration term of service.

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 92

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92F10 Petroleum Supply SP / 4 years, 9 months

d. Prior Service / Characterizations: RA (6 May 2014 – 12 March 2017) HON

e. Overseas Service / Combat Service: Korea / None (2 February – 28 October 2016)

f. Awards and Decorations: AAM-7, AGCM-2, NDSM, GWTSM, KDSM, ASR, OSR, DMB-DMW

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 11 March 2014, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 6 May 2014, they enlisted in the Regular Army for 3 years, 23 weeks as a PVT. Although the DD Form 4 (Enlistment/Reenlistment Document) is not in the record, the applicant reenlisted on 13 March 2017 for 4 years as a SPC and executed a four-month extension.

(2) The Enlisted Record Brief provides the applicant deployed to Korea for 9 months (2 February – 28 October 2016) and on 1 March 2018, promoted to SGT. They have numerous recognitions, to include seven Army Achievement Medals, two Army Good Conduct Medals, and a Korea Defense Service Medal. On 14 November 2018 and 28 January 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and on 9 July 2019, for law enforcement investigation (MA).

(3) On 11 January 2019, the applicant accepted NJP in violation of Article 91, UCMJ, on 1 November 2018, were disrespectful in language and deportment toward SFC [redacted], a noncommissioned officer, by aggressively throwing down [their] jacket and saying to [them], "There isn't a f*****g issue, I took off the f*****g jacket" or words to that effect; in violation of Article 107, UCMJ, made a false official statement, to wit: "I'm in 209th, you can come see me

there”, which was false, as the applicant was in E Company, 3-25 GSAB, 25th CAB.

(a) Four Sworn Statements, made on the day of the incident, provides the applicant ignored SFC twice when told to remove their motorcycle jacket as they walked across the parking lot, and did not do so until they reached the building; SFC followed the applicant into the building asking, “If there was an issue?” and “Sergeant, what is the problem?” and “If [they] were having a bad day?” The applicant threw their bag and jacket on the ground and told SFC, “There isn’t a f*****g issue, I took off the f*****g jacket” and their unit was “209th, come see [them] there” when the SFC asked.

(b) An undated self-authored statement provides the applicant would like to first apologize to SFC for their reaction and how they handled things with them during the incident. They did not acknowledge SFC because they was going to remove their motorcycle jacket prior to SFC telling them. The applicant was in a rush and SFC took it as disrespect when they did not receive an answer. SFC approached them aggressively, cursing at them, asking “What is your problem? Why are you giving me all this f*****g attitude?” The applicant lost their military bearing when they answered SFC with a curse word in their response and should have handled things a lot better. They are also guilty of lying about their unit and ready for their punishment. They requested to keep their same rank as it was hard for them to obtain and wanted to continue to make their family proud of them, as well as maintain the support for their 4-month-old baby living on the mainland. They wanted to go on block leave to finally see their baby in person for the first time, and not just through pictures and videos; if they are flagged, they will not be able to do so, though it is their own fault. The applicant is absolutely not the person they made themselves out to be and do not take criticism or any matter of such harshly, however, SFC’s action in approaching them, got the better of them.

(c) Their punishment included reduction to SPC; forfeiture of \$1277.00 pay per month for 2 months, suspended, to be automatically remitted if not vacated on or before 11 July 2019; extra duty for 45 days; oral reprimand. They did not appeal.

(d) On 11 June 2019, their company and battalion commanders recommended the applicant for special court-martial.

(4) On 21 June 2019, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulations 635-200, Chapter 10, discharge in lieu of trial by court-martial. In their request, they affirmed no one had subjected them to coercion, counsel advised them of the implications of their request, and the applicant further acknowledged they were guilty of the charge against them or a lesser one. Although understanding they may be discharged Under Other than Honorable Conditions, the applicant requested a General (Under Honorable Conditions) characterization of service and was advised a statement may be made on their behalf.

(a) The same day, defense counsel endorsed their voluntary discharge request, acknowledging the applicant was counseled on the possible effects of an Under Other than Honorable Conditions characterization of service.

(b) On 24 June 2019, the brigade commander recommended special court-martial.

(c) On 27 June 2019, the appropriate separation authority approved their voluntary discharge request and characterized their service as Under Other than Honorable Conditions, with a reduction to the lowest enlisted grade.

(5) On 1 July 2019, they were issued separation orders. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 15 July 2019, with 5 years, 4 months, and 6 days of total service. The applicant has 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:** DD Form 293 (Application for the Review of Discharge)

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with this application.

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the

time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) 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 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable

conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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.

g. Manual for Courts-Martial (2016 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The

purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

(1) Article 92 (violation of failure to obey a general order or regulation) states in subparagraph the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years.

(2) Article 107 (false official statements) states in subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

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

b. A review of the available evidence provides the applicant completed their first reenlistment for 4 years and executed an extension for 4 months. They served 9 months in Korea and received multiple recognitions, including seven Army Achievement Medals, two Army Good Conduct Medals, and the Korea Defense Service Medal. They served 4 years, 5 months, and 26 days, prior to their indiscipline.

(1) In November 2018, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action, for disrespectful in language and deportment towards SFC [redacted] and for making a false official statement to SFC, falsifying their company. They received NJP and in a self-authored statement, apologized to SFC for their reaction and how they handled their correcting them during the incident and admitted to lying about their unit. They were ready for their punishment, however, requested to keep their same rank as it was hard for them to obtain, hoping to be able to continue to make their family proud and to maintain the support for their four-month-old baby, living on the mainland. They desired leave to the mainland to see their baby in person for the first time and would not be able to if they are flagged. The applicant is absolutely not the person they made themselves out to be that morning does not take criticism or any matter of such in a harshly, however, the way SFC aggressively approached them, got the better of them. They were reduced to SPC. The chain of command all recommended the applicant for a special court-martial.

(2) As result of the charges and after consulting with counsel, the applicant requested to be voluntarily discharged in lieu of trial by court-martial with a General (Under Honorable Conditions) characterization of service, though they were separated with an Under Other than Honorable Conditions and reduced to the lowest enlisted grade. The record is void of a medical and/or mental status examination, although, not required for a voluntary discharge request, this can be requested by the Soldier.

(3) They completed 5 years, 4 months, and 6 days of their 4 year, 4 month contractual obligation prior to the misconduct which led to their discharge.

c. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the

current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 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? **No**. The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends, they requested a General (Under Honorable Conditions) and to keep their same rank as it was hard for them to obtain, hoping to be able to continue to make their family proud and to maintain the support for their four-month-old baby, living on the mainland. The applicant desired leave to see their baby in person for the first time and would not be able to if they were flagged. The Board considered this contention and based on the applicant's record of service, voted to grant relief.

(2) The applicant contends they are not the person they made themselves out to be that morning and do not take criticism harshly, however, SFC's actions in approaching them, got the better of them. They apologized to SFC for their reaction and how they handled correcting them during the incident and admitted to lying about their unit. SFC approached them aggressively, cursing at them, asking "What is your problem? Why are you giving me all this f*****g attitude?" The applicant lost their military bearing when they answered them with a curse word in their response and they should have handled things a lot better. The Board considered this contention and based on the applicant's record of service, voted to grant relief.

c. The Board determined the discharge is inequitable. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service factors (Length, Quality) that mitigate the applicant's misconduct (disrespect toward an NCO and false statement). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on evidence of in-service factors (Length, Quality) that mitigate the applicant's misconduct (disrespect toward an NCO and false statement). Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

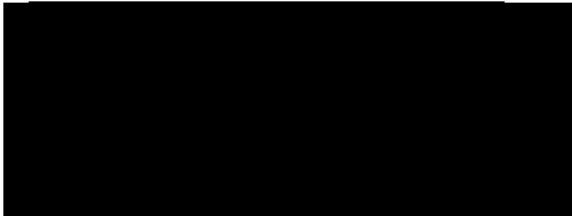
(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

3/8/2024



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