

1. Applicant's Name: [REDACTED]**a. Application Date:** 16 March 2021**b. Date Received:** 23 March 2021**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 general (under honorable conditions) and a narrative reason change.

The applicant seeks relief contending, in effect, the applicant was not in the right state of mind to understand the implications and how the decisions would affect the applicant. The applicant was dealing with mental health issues due to War and was prescribed antidepressants and sleeping pills. The applicant tried to commit suicide on more than one occasion. The decision to go absent without leave (AWOL) seemed like the only choice given the applicant's state of mind. When the applicant was given the opportunity to waive rights the applicant was entitled to and go home early, the applicant took it without realizing the repercussions. The applicant had honorable service and received awards. Being out of the Army does not take away the things the applicant saw, or the decisions made as they still affect the applicant today. The applicant is requesting an upgrade not only to be able to receive the help needed from the Department of Veteran Affairs (VA) but also for future employment opportunities.

b. Board Type and Decision: In a records review conducted on 15 November 2024, and by a 5-0 vote, the board determined that the discharge was inequitable based on the applicant's medical diagnosis of PTSD which mitigates the basis for separation (AWOL). Additionally, the applicant has length of service. 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

*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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 5 August 2010**c. Separation Facts:**

(1) Date DD Form 458 (Charge Sheet): 24 June 2010, reflects the applicant did on or about 23 March 2010, without authority, was absent from the unit and remained absent until on or about 21 June 2010.

(2) Legal Consultation Date: On 24 June 2010, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200, Chapter 10, for charges preferred

against the applicant under the Uniform Code of Military Justice and admitted to being guilty of one or more of the charges.

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 20 July 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 February 2008 / 5 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 19 / GED / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11C10, Indirect Fire Infantryman / 2 years, 3 months, 4 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Italy, deployed to Afghanistan from Italy

f. Awards and Decorations: NDSM, CIB, Parachutist Badge

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Health Record, 19 January 2010, reflects the applicant was seen for an initial psychiatric evaluation and was diagnosed with adjustment disorder with mixed emotional features. The medical records reflect, in part, the applicant deployed to Afghanistan and described a critical incident of firing his mortar and seeing 2 children and their mother deaf and disfigured by the applicant's action. The applicant also described other experience.

(2) Health Record, 2 March 2010, reflects the applicant was directed for evaluation following an incident where the applicant attempted suicide. The applicant was diagnosed with adjustment disorder with depressed mood.

(3) DA Forms 4187 (Personnel Action) shows the applicant's duty status changed from Present for Duty (PDY) to Absent Without Leave (AWOL) effective, 23 March 2010; from AWOL to Dropped From Rolls, effective, 22 April 2010; from DFR to PDY, effective 21 June 2010.

i. Lost Time / Mode of Return: AWOL X 89 days (23 March 2010 – 20 June 2010) / Returned

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides medical documents which reflects the applicant was diagnosed with adjustment disorder with mixed emotional features and adjustment disorder with depressed mood.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: On-Line Application, DD Form 214, Letters of Support-2, medical records, personal statement, Character Letters-2

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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) 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) Paragraph 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged 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. (See chap 3, sec II).

(7) Paragraph 10b stipulates 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.

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.

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

The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, paragraph 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of Under Other Than Honorable Conditions.

The applicant requests the applicant's narrative reason for the discharge be changed. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was separated under the provisions of Chapter 10, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial By Court-Martial." Army Regulation 635-5, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be listed.

The applicant contends the applicant was not in the right state of mind to understand the implications and how the decisions would affect the applicant.

The applicant contends the applicant was dealing with mental health issues due to War and was prescribed antidepressants and sleeping pills and the applicant tried to commit suicide on more than one occasion. The applicant's AMHRR is void of a mental health evaluation or a mental health diagnosis. The applicant provides medical records reflecting an in-service diagnosis of adjustment disorder with mixed emotional features and adjustment disorder with depressed mood.

The applicant contends the decision to go AWOL seemed like the only choice given the applicant's state of mind.

The applicant contends when the applicant was given the opportunity to waive the rights entitled to and go home early, the applicant took it without realizing the repercussions.

The applicant states the applicant had honorable service and received awards. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant states being out of the Army does not take away the things the applicant saw, or the decisions made as they still affect the applicant today. The applicant is requesting an upgrade not only to be able to receive the help needed from VA but also for future employment opportunities.

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/experiences: PTSD due to combat. (Note-the applicant's diagnoses of Adjustment DO with mixed emotional features; Adjustment DO with depressed mood; Adjustment DO with anxiety; Adjustment DO are all subsumed under the diagnosis of PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for PTSD due to combat establishes nexus with active service. (Note-due to the nature of his discharge, applicant is not eligible for VA services or VA service-connection).

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, PTSD related to combat. As there is an association between PTSD and avoidant behavior, there is a nexus between his diagnosis of PTSD and his period of being absent without leave. (Note-the applicant's diagnoses of Adjustment DO with mixed emotional features; Adjustment DO with depressed mood; Adjustment DO with anxiety; Adjustment DO are all subsumed under the diagnosis of PTSD. Note-applicant was never referred to ASAP for his binge drinking).

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's PTSD outweighed the basis for separation - (AWOL).

b. Response to Contention(s):

(1) The applicant contends the applicant was not in the right state of mind to understand the implications and how the decisions would affect the applicant. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's diagnosis of PTSD which mitigates the basis for separation (AWOL).

(2) The applicant contends the applicant was dealing with mental health issues due to War and was prescribed antidepressants and sleeping pills, and the applicant tried to commit suicide on more than one occasion. The board considered this contention during proceedings.

(3) The applicant contends the decision to go AWOL seemed like the only choice given the applicant's state of mind. The board considered this contention during proceedings and determined an upgrade was warranted based on the information outlined above in paragraph 9a (3-4) and 9b (1) of this document.

(4) The applicant contends when the applicant was given the opportunity to waive the rights entitled to and go home early, the applicant took it without realizing the repercussions. The board considered this contention during proceedings and determined an upgrade was warranted based on the information outlined above in paragraph 9a (3-4) and 9b (1) of this document.

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c. The board determined the discharge is inequitable based on the applicant's medical diagnosis of PTSD which mitigates the applicant's misconduct (AWOL) – basis for separation. Additionally, the board noted the applicant has length of service. 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. The board determined the reenry code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable based on the applicant's medical diagnosis of PTSD which mitigates the applicant's misconduct (AWOL). Additionally, the applicant has length of service. 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 rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

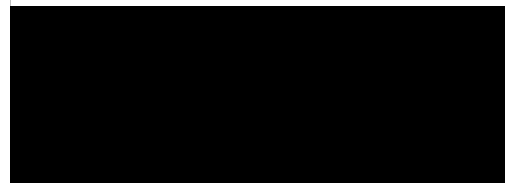
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

11/21/2024

**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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs