

1. Applicant's Name:

- a. **Application Date:** 22 October 2020
- b. **Date Received:** 2 November 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 and a name correction.

The applicant seeks relief contending, in effect, the applicant was discharged due to mental health conditions and believes the applicant is eligible for an automatic upgrade. An honorable discharge would better reflect the applicant's overall service and would enhance opportunities for employment, education, and other benefits. The states the applicant cannot get help from Department of Veteran Affairs (VA) and has been homeless for 7 years. The applicant had mental issues related to military service but was unable to communicate the issues at the time nor was leadership able to help resolve the issues. The applicant was also sexually assaulted.

b. **Board Type and Decision:** In a records review conducted on 19 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:** Misconduct (Serious Offense) / AR 635-200 14-12c / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 21 June 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 April 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed to be where required on multiple occasions, violated company, battalion, and brigade policies on multiple occasions. The applicant also violated state law by drinking alcohol while under the legal drinking age, additionally, the applicant assaulted a military member and destroyed military property. (It was determined the allegation of assaulting another service member was not supported by the documentation)

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

(4) **Legal Consultation Date:** On 9 May 2013, the applicant waived the right to consult with counsel.

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

(6) Separation Decision Date / Characterization: 14 June 2013 / General (Under Honorable Conditions) The separation authority found the applicant's medical condition was not a substantial contributing cause of the applicant's misconduct forming the basis for separation.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 November 2011 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 115

c. Highest Grade Achieved / MOS / Total Service: E-2 / None / 1 year, 7 months, 14 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) GOMOR, 15 March 2013, reflects the applicant was reprimanded for operating a vehicle under the influence of intoxicating liquor and for consuming alcoholic beverages while under 21 years of age.

(2) CG Article 15, 13 April 2012, reflects the applicant was derelict in the performance of duties in that the applicant found unauthorized foods in the barracks. The punishment consisted of extra duty, restriction, and an oral reprimand.

(3) CG Article 15, 23 April 2012, reflects the applicant failed to report at the prescribed time and the appointed place of duty on or about 31 March 2012; failed to obey a lawful order by consuming alcohol while in Phase IV status; and consumed alcoholic beverage as a minor under the age of 21. The punishment consisted of reduction to private/E-1; forfeiture of \$347 pay; restriction and extra duty for 14 days; and an oral reprimand.

(4) Medical Evaluation Board (MEB) Proceedings, dated 18 January 2013, reflects the applicant was required to undergo a complete medical examination and a mental status evaluation in accordance with AR 40-501. The applicant was further referred to a physical evaluation board (PEB).

(5) The applicant was counseled on multiple occasions for misconduct.

(6) A search of the Army Criminal file indexes revealed no records pertaining to the applicant.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides medical documents reflecting the applicant had a history of depression and anxiety.

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 19 March 2013, reflects the applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. The applicant was diagnosed by competent medical authorities. The applicant had a negative screening for PTSD and mild TBI.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149, medical records.

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) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c, states 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.

(7) 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable and a name change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the applicant was discharged due to mental health conditions and believes the applicant is eligible for an automatic upgrade. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

The applicant contends an honorable discharge would better reflect the applicant's overall service. The applicant AMHRR contains evidence reflecting the applicant involved in multiple acts of misconduct and received nonjudicial punishment on more than on occasion.

The applicant contends an upgrade would enhance opportunities for employment, education, and other benefits. The states the applicant cannot get help from VA and has been homeless for 7 years. The Board does not grant relief to gain employment or enhance employment opportunities and eligibility for veteran's benefits to include educational benefits under the post-9/11 or Montgomery GI Bill does 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. All veterans at risk for homelessness or attempting to exit homelessness can request immediate assistance by calling the National Call Center for Homeless Veterans hotline at 1-877-424-3838 for free and confidential assistance.

The applicant contends the applicant had mental issues related to military service but was unable to communicate the issues at the time nor was leadership able to help resolve the issues. The applicant's AMHRR contains documentation which supports a diagnosis of in-service adjustment disorder with mixed and depressed mood/persistent insomnia/ ADHD. The record shows the applicant underwent a MSE on 19 March 2013, which reflects the applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. The separation authority found the applicant's medical condition was not a substantial contributing cause of the applicant's misconduct forming the basis for separation.

The applicant contends the applicant was sexually assaulted. A search of the Army Criminal file indexes revealed no records pertaining to the applicant.

The applicant's request for a name change does not fall within the purview of this board. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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 was diagnosed in-service with an Adjustment Disorder and ADHD. The applicant is not service connected but diagnosed by the VA with Adjustment Disorder and asserted PTSD secondary to difficulties with his family; he has not asserted PTSD secondary to service or reported a sexual assault. The applicant submitted non-behavioral health records which included diagnostic and medication lists reflecting post-service diagnoses of PTSD, MDD, and Bipolar Disorder. It is noted the applicant states he was sexually assaulted prior to misconduct.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with an Adjustment Disorder and ADHD. It is noted the applicant states he was sexually assaulted prior to misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that without documentation to clarify the submitted diagnoses or referenced sexual assault, these cannot be applied. Regarding the known Adjustment Disorder, this is not mitigating as it is not a mental defeat or disease impairing cognitive processes.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the in-service diagnosis with Adjustment Disorder and ADHD did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends the applicant was discharged due to mental health conditions and believes the applicant is eligible for an automatic upgrade. The Board considered this contention and determined that a change to the applicant's characterization of service is not warranted because the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

(2) The applicant contends an honorable discharge would better reflect the applicant's overall service. The Board considered this contention and determined that a change to the applicant's characterization of service is not warranted because the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. The applicant's AMHRR contains evidence reflecting the applicant involved in multiple acts of misconduct and received nonjudicial punishment on more than one occasion.

(3) The applicant contends an upgrade would enhance opportunities for employment, education, and other benefits. The states the applicant cannot get help from VA and has been

homeless for 7 years. This contention was acknowledged and considered; however, the Board does not grant relief to gain employment or enhance employment opportunities and eligibility for veteran's benefits to include educational benefits under the post-9/11 or Montgomery GI Bill does 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.

(4) The applicant contends the applicant had mental issues related to military service but was unable to communicate the issues at the time nor was leadership able to help resolve the issues. The Board considered this contention and the applicant's assertion of mental issues; however, the Board could not determine whether the applicant's assertions actually outweighed the applicant's misconduct without the Board Medical Advisor determination on medical mitigation. Misconduct- (failed to be where required on multiple occasions, violated company, battalion, and brigade policies on multiple occasions. The applicant also violated state law by drinking alcohol while under the legal drinking age, additionally, the applicant assaulted a military member and destroyed military property. It was determined the allegation of assaulting another service member was not supported by the documentation. Without additional medical evidence, the Board was unable to determine if the applicant's asserted mental health issues. The applicant's AMHRR contains documentation which supports a diagnosis of in-service adjustment disorder with mixed and depressed mood/persistent insomnia/ ADHD. The record shows the applicant underwent a MSE on 19 March 2013, which reflects the applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. The separation authority found the applicant's medical condition was not a substantial contributing cause of the applicant's misconduct forming the basis for separation.

(5) The applicant contends the applicant was sexually assaulted. This contention was acknowledged and considered; however, a search of the Army Criminal file indexes revealed no records pertaining to the applicant.

b. 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 contentions that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant's Adjustment Disorder does not mitigate the applicant's misconduct (FTRs, failure to obey an order or regulation, drinking alcohol while underage, destroyed military property). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008244

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

1/23/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs