

1. Applicant's Name:

- a. **Application Date:** 31 October 2020
- b. **Date Received:** 5 November 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant had honorable service until the applicant began to suffer from post-traumatic stress disorder (PTSD) and other injuries which occurred while serving on active duty. The applicant currently has an 80-percent disability rating from the Department of Veteran Affairs. The applicant received nonjudicial punishment but was a valuable Soldier.

b. **Board Type and Decision:** In a telephonic personal appearance hearing conducted on 8 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 10 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 6 July 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 19 March 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: FG Article 15 for assault (14 December 2011); CG Article 15 for assault (9 February 2012); and failure to be at appointed place of duty on 1 February 2012 and 2 March 2012.

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

(4) **Legal Consultation Date:** 20 March 2012

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

(6) **Separation Decision Date / Characterization:** 15 June 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 16 October 2009 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 85
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25L, Cable System Installer/Maintainer/ 4 years, 9 months, 17 days
- d. **Prior Service / Characterizations:** RA, 20 September 2007 – 15 October 2009 / HD
- e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (20 August 2009 – 16 July 2010)
- f. **Awards and Decorations:** AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) FG Article 15, 14 December 2011, assault on spouse. The punishment consisted of reduction to private/E-2; forfeiture of \$822 for two months, suspended until 11 June 2012; and extra duty for 45 days.

(2) CG Article 15, 9 February 2012, assault on spouse. The punishment consisted of reduction to private/E-1; forfeiture of \$347 pay, suspended until 7 August 2012; and extra duty for 14 days.

(3) The applicant received five negative counseling statements dated between 6 December 2011 and 6 March 2012, for failure to repair, simple assault, and discharge counseling.

(4) Two MP Reports dated 18 November 2011 and 24 December 2011, reflects the applicant was the subject of two separate investigations of simple assault against the applicant's spouse.

(5) Mental Status Evaluation (MSE), 6 March 2012, reflects the applicant was mentally responsible, with thought content as clear, and was able to recognize right from wrong. The applicant was screened for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) and these conditions were not present and did not meet Army Regulation 40-501 criteria for a medical evaluation board.

(6) On 15 June 2012, the General Court-Martial Convening Authority (GCMCA) reviewed the separation packet and the medical condition outlined in the Medical Evaluation Board Report and determined the medical condition was not a direct or substantial contributing cause of the misconduct which led to the recommendation for an administrative elimination and directed that the applicant be processed under the administrative separation provisions of AR 635-200, Chapter 14-12b.

- 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, Letter of Support

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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends, in effect, the applicant had honorable service until the applicant began to suffer from PTSD and other injuries which occurred while serving on active duty. The applicant AMHRR is void of a PTSD diagnosis nor does the applicant provide evidence pertaining to a mental health diagnosis. The AMHRR reflects the applicant underwent a MSE on 6 March 2012, which reflects the applicant was mentally responsible, with thought content as clear, and was able to recognize right from wrong. The applicant was screened for PTSD and TBI, these conditions were not present and did not meet Army Regulation 40-501 criteria for a medical evaluation board.

The applicant states; the applicant currently has an 80-percent disability rating from the Department of Veteran Affairs. The applicant did not provide documents pertaining to the nature of disability rating.

The applicant received nonjudicial punishment but was a valuable Soldier. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s): N/A

b. The applicant presented the following additional contention(s): The applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

c. Counsel / Witness(es) / Observer(s): N/A

10. 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: the applicant held in-service diagnoses of Adjustment Disorder and Anxiety Disorder Not Otherwise Specified with notation a Post-Traumatic Stress Disorder evaluation determined the applicant did not have the condition. Post-service, the applicant is service connected for Anxiety Disorder Not Otherwise Specified. Regarding a Post-Traumatic Stress Disorder diagnosis, any VA listing of the diagnosis has been based solely on self-report with actual evaluations determining the applicant did and does not have Post-Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder and Anxiety Disorder Not Otherwise Specified with notation a Post-Traumatic Stress Disorder evaluation determined the applicant did not have the condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor opined that while liberal consideration was applied and Post-Traumatic Stress Disorder generously applied, the misconduct is only partially mitigated. Specifically, even in very liberally applying a Post-Traumatic Stress Disorder diagnosis, Post-Traumatic Stress Disorder only mitigates the Failure to Report based on trauma and avoidance. However, it would not mitigate the assaults. Additionally, the service-connected condition does not mitigate the assaults. Rather, the assaults reflect a pervasive pattern of violence beginning pre-enlistment and continuing post-service more aligned with characterological difficulties. Characterological difficulties do not excuse misconduct as an individual is still aware of the choices they are making, right from wrong, and likely consequences. Moreover, a review of the records reflects the applicant could clearly outline the events and offer justifications further supporting clear cognitive processes.

(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 although the applicant's in-service diagnosed Adjustment Disorder and Anxiety Disorder Not Otherwise Specified mitigated the Failure to Report Offense, the available evidence did not support a conclusion that the applicant's Post-Traumatic Stress Disorder self-assertion outweighed the basis for applicant's separation for domestic events against spouse and another person post-service for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the applicant had honorable service until the applicant began to suffer from PTSD and other injuries which occurred while serving on active duty. The Board considered this contention and determined that the applicant's Post-Traumatic Stress Disorder self-assertion does not outweigh the misconduct based on the seriousness of the applicant's offense of domestic events against spouse and another person post-service.

(2) The applicant received nonjudicial punishment but was a valuable Soldier. The Board considered this contention and the applicant's four years and nine months of service, including one combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's domestic events against spouse and another person post-service.

(3) The applicant states the applicant currently has an 80-percent disability rating from the Department of Veteran Affairs. The Board considered this contention and determined that the criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had unmitigated basis for separation.

c. The Board determined: 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Post-

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Traumatic Stress Disorder self-assertion did not excuse or mitigate the offenses of domestic events against spouse and another person post-service. The Board also considered the applicant's contention regarding the applicant's contention that the applicant had honorable service until the applicant began to suffer from PTSD and other injuries which occurred while serving on active duty and found that totality of the applicant's record does not warrant a discharge upgrade. 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.

11. 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:

1/31/2024

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