

1. Applicant's Name:

- a. **Application Date:** 12 April 2021
- b. **Date Received:** 12 April 2021
- 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 under honorable conditions (general). The applicant requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, they believe their discharge was unjust and motivated by a personal vendetta held by their squad leader. Their discharge was based solely on a case put together by their squad leader, who manipulated the process to achieve desired results. They presented a "Pattern of Misconduct" to their chain of command but failed to give them the justification of those actions. Not only did the squad leader withhold information related to their misconducts but they would instigate situations that would have others perceive them in a negative light. At first, they worked directly under their supervision, in which they would talk at them in a derogatory and disrespectful manner, intentionally trying to demonstrate their superiority. Their squad leader attempted to humiliate them many times, in effort to discredit or damage their reputation within the unit.

The "Pattern of Misconduct" was built based on being late or missing PT sessions, formations, dress and appearance, a PT test failure, a missed medical appointment, and failure to make necessary medical appointments. Their squad leader failed to mention to the chain of command that they had their hearing tested and was diagnosed with tinnitus and was in fact hard of hearing. An incident happened in Basic Training and another during deployment that resulted in hearing loss and issues with hearing and identifying certain sounds such as alarm clocks and ring tones. Being unaware of their hearing issue at first led to their tardiness and sometimes missed PT sessions and formations, after they were made aware of their hearing examination results, they immediately notified their squad leader, but they were not interested in the results. There were nights that they would not sleep because they did not want to wake up late, one morning, they woke up late and rushed to formation and were counseled later for dress and appearance, due to not being freshly shaved. They received paperwork for PT test failure when they fractured their ankle during the test. The medics responded and examined their ankle in front of their squad leader and later did an x-ray that confirmed their ankle was fractured. As for their missed medical appointment for ASAP, their squad leader was supposed to attend the appointment with them, the squad leader forgot about the appointment and they were forced to reschedule, and they were issued paperwork for missing that medical appointment.

They attempted to channel their concerns up the chain of command and requested to be transferred to a different unit, but their concerns were not taken seriously, and they were only moved to a different shift. They were still supervised by their squad leader, who looked for every opportunity to discredit them. After struggling to stay afloat for months, they finally gave up and just let the pieces land where they fell, nothing they did seem to make any difference, their squad leader's words weighed heavier due to their rank and position. During the last few months, being chaptered out seemed more hopeful for a fresh start than fighting to stay in.

Their main reason for a change to honorable is because they do not believe they were discharged justly, additionally they believe they deserve to be eligible for the G.I. Bill. The

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narrative reason for separation is hindering their opportunities within the workforce as they were turned away from a police officer trainee position due to their character of service and narrative reason.

b. Board Type and Decision: In a records review conducted on 23 August 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: Pattern of Misconduct / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General)

b. Date of Discharge: 10 July 2018

c. Separation Facts:

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

(2) Basis for Separation: NIF

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 27 April 2018 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 August 2016 / 5 years, 27 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 99

c. Highest Grade Achieved / MOS / Total Service: E-2 / 91B10 Wheeled Vehicle Mechanic / 1 year, 11 months, 9 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

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(1) An Enlistment/ Reenlistment Document provides the applicant enlisted in the Army Reserve at the rank of E-1 with an active duty obligation of 5 years and 27 weeks on 13 November 2015.

(2) An Enlisted Record Brief (ERB) provides the applicant received a rank reduction to E-1 on 9 May 2017 and they were flagged for an involuntary Adverse Separation action (BA) on 28 August 2017.

(3) A memorandum, Headquarters, 1st Armored Brigade Combat Team, Fort Hood, Texas subject: Separation under AR 635-200, Chapter 14-12b dated 27 April 2018 provides the appropriate authority approved the applicant's administrative separation and directed a General, under honorable conditions characterization of service.

(4) A Certificate of Release or Discharge from Active Duty (DD Form 214) provides the applicant was discharged on 10 July 2018.

- Authority: 635-200, Chapter 14-12b
- Narrative Reason: Pattern Of Misconduct
- Service Characterization: Under Honorable Conditions (General)
- Remarks: Member has not completed first term of service
- Net Service: 1 year, 11 months, and 9 days
- Effective Date of Pay Grade: 9 May 2017

i. **Lost Time / Mode of Return:** None.

j. **Behavioral Health Condition(s):** None.

(1) **Applicant provided:**

(2) **AMHRR Listed:**

5. APPLICANT-PROVIDED EVIDENCE: An online DD Form 293 (Record Review) application, two DD form 214's, a Hearing Conservation Data document, a VA rated disabilities screen capture and two statements in support of claim documents; one of them blank and the other a letter of recommendation.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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 provides the authorized types of characterization of service or description of separation.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. 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.

(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 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) provides the policies, operating rules and steps governing the suspension of favorable personnel actions. A flag is emplaced during some type of disciplinary or administrative action until that action is concluded. The Flag should be initiated within 3 working days after identification of the soldiers' unfavorable status and removed within 3 working days after determination of the final disposition. Commanders and general office staff will establish necessary internal controls to ensure requirements are met: DA Form 268 is prepared to reflect that favorable personnel actions are suspended; the Flag is input into HR systems without delay.

- Flag code "B" is a nontransferable code used when involuntary separation or discharge is initiated

f. 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 "JKA" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

g. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

h. 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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

- 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.
- RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.
- RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

a. The applicant requests an upgrade to honorable. The applicant's DD Form 214 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge, which is normally considered appropriate for a soldier discharged for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 19, nine months after they enlisted, they received a rank deduction; the AMHRR is void of the non-judicial punishment that resulted in their rank deduction. Three months later they were flagged for involuntary administrative separation.

c. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of the applicant's entire separation packet to include documentation to support if the applicant consulted with counsel and if they received the required medical and mental separation examinations. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's involuntary separation. Notwithstanding the lack of evidence, the record provides they applicant

was flagged for involuntary separation, and the appropriate authority approved their administrative separation. The applicant signed a properly constituted DD Form 214, that shows they were discharged under the provisions of Army Regulation 635-200, Chapter 14-12b (pattern of misconduct) with an under honorable conditions (general) characterization of service on 10 July 2018.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record.

e. 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 excuse or mitigate the discharge? **N/A.**

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

b. Response to Contention(s): The applicant contends their discharge was unjust. The Board considered this contention and determined that there is insufficient evidence in the applicant's official record or provided by the applicant that the applicant's discharge was unjust. There are no experiences or conditions that could excuse or outweigh the applicant's discharge, therefore, no change is warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

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 does

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not have any BH conditions or experiences that could excuse or mitigate the offenses of multiple failures to report (FTRs), and the Army Physical Fitness Test (APFT) failure. The applicant also lacks in-service factors (length, quality, combat) or post service accomplishments for the Board to consider. 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 rationale, as the reason the applicant was discharged was both proper and equitable.

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

9/17/2024

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