

1. Applicant's Name:

- a. **Application Date:** 28 April 2021
- b. **Date Received:** 12 May 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 general (under honorable conditions). The applicant requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason.

b. The applicant seeks relief contending, in effect, the applicant never actually got in trouble for anything while in the Army and did not receive an Article 15. The applicant received counselings, however, the applicant received a number of counselings mainly from a SGT who strongly disliked the applicant and talked badly about the applicant to other soldiers. The applicant was jumped and beaten on more than one occasion and constantly hazed for medical issues the applicant had no control of. The unit did not support the applicant through the applicant's medical condition (wrist injury requiring a soft tissue reconstruction surgery) and the unit always went against the doctor's orders. The applicant further details the contentions in an allied self-authored statement provided with the application.

c. **Board Type and Decision:** In a records review conducted on 31 July 2024, and by a 4-1 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.

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 5 September 2019

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:** NA

(6) **Separation Decision Date / Characterization:** 19 June 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210013631

- a. **Date / Period of Enlistment:** 29 August 2017 / 3 years and 16 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 88
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 2 years and 7 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Germany / None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) F Troop, 2D Squadron, 2D Cavalry Regiment, APO AE 09112, memorandum thru, 2D Squadron, 2D Cavalry Regiment, for 2D Cavalry Regiment, subject: Commander's Report - Proposed Separation Under AR 635-200, Chapter 14-12b, A Pattern of Misconduct, (Applicant), 5 June 2019, states the applicant was recommended for separation for:

(a) On or about 24 March 2018, the applicant was disrespectful in language towards Sergeant (SGT) S__ M__ by stating to SGT M__ "this is bullshit," or words to that effect.

(b) Between on or about 22 March 2018 and on or about 25 March 2018, the applicant disobeyed an order from a medical officer by not remaining in the applicant's quarters.

(c) On or about 23 August 2018, the applicant failed to go to the applicant's appointed place of duty, to wit: 0845 work call located at building 660.

(d) On or about 24 August 2018, the applicant failed to go to the applicant's appointed place of duty, to wit: 0515 work call located at building 606.

(e) On or about 18 September 2018, the applicant orally communicated towards M__ L__-G__ certain indecent language, to wit: "fuck you," or words to that effect, such conduct being of a nature to bring discredit upon the armed forces.

(f) On or about 20 September 2018, the applicant failed to go to the applicant's appointed place of duty, to wit: 0630 physical training formation located at building 323.

(2) The applicant's Enlisted Record Brief, 6 September 2019, shows the applicant was flagged for adverse action (AA), effective 8 May 2019; and was ineligible for reenlistment due to an adverse action flag (9B).

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; and self-authored letter.

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) 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. AR 635-8 (Separation Processing and Documents) and AR 600-8-104 (Army Military Human Resources Records Management) both require supporting documents for an approved separation action to be maintained in the affected Soldier's official military personnel file.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 1-32, Medical examinations, and mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under chapters 13 or 14 (section III).

(2) Paragraph 2-2 (Notice), stated commanders were to notify the soldier in writing of the following:

(a) Provide the basis of the proposed separation, including the circumstances upon which the action was based, and a reference to the applicable regulatory separation provision.

(b) The Soldier will be advised of the following rights:

- whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army
- the least favorable characterization of service or description of separation they could receive
- the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander

(c) Further advise the Soldier of the following rights:

- consult with military or civilian counsel at their own expense
- submit statements in their own behalf
- obtain copies of documents that will be sent to the separation authority supporting the proposed separation
- to a hearing before an administrative separation board under section III of this chapter if they had 6 or more years of total active and Reserve service on the date of initiation of recommendation for separation
- waive their rights

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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) 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.

f. Army Regulation 635-5-1 (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. 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:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

a. The applicant requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty)), which was authenticated by the applicant's electronic signature. The commander's report shows the applicant had multiple failures to be at the appointed place of duty, was disrespectful in language, disobeyed an order from a medical officer, and orally communicated certain indecent language. The applicant served 2 years and 7 days and was discharged on 5 September 2019 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant requests the SPD code should be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12b, is "JKA."

e. The applicant requests a RE code change and would like to rejoin the Army. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes if appropriate.

f. The applicant contends, in effect, the applicant never actually got in trouble for anything while in the Army and did not receive an Article 15. The applicant received counselings, however, the applicant received a number of counselings mainly from a SGT who strongly disliked the applicant and talked badly about the applicant to other soldiers. The applicant was jumped and beaten on more than one occasion and constantly hazed for medical issues the applicant had no control of. The unit did not support the applicant through the applicant's medical condition (wrist injury requiring a soft tissue reconstruction surgery) and the unit always went against the doctor's orders. The applicant's AMHRR contains a commander's report that shows multiple reasons the applicant was counseled for which led to separation from the Army. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

g. 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? **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 diagnosis: PTSD

(2) Did the condition exist or experience occur during military service? **Yes.** Applicant asserts trauma events in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, avoidance, and difficulty with authority, the basis for separation is mitigated. However, the Board considered additional misconduct in the medical file (multiple acts of misconduct and the applicant was under CID investigation for distributing drugs). The additional misconduct is not medically mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the basis for separation is mitigated by the applicant's PTSD. However, PTSD does not mitigate the additional misconduct found in the medical file, being under CID investigation for distributing LSD, as PTSD does not affect one's ability to distinguish between right from wrong and act in accordance with the right.

b. Prior Decisions Cited: None

c. Response to Contention: The applicant contends, in effect, the applicant never actually got in trouble for anything while in the Army and did not receive an Article 15. The applicant received counselings, however, the applicant received a number of counselings mainly from a SGT who strongly disliked the applicant and talked badly about the applicant to other soldiers. The applicant was jumped and beaten on more than one occasion and constantly hazed for medical issues the applicant had no control of. The unit did not support the applicant through

the applicant's medical condition (wrist injury requiring a soft tissue reconstruction surgery) and the unit always went against the doctor's orders.

The Board considered the applicant's contention and the applicant's behavioral health condition and found that the totality of the applicant's record does not warrant a discharge upgrade.

d. 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.

e. Rationale for Decision:

(1) The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, a medical review, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and the applicant's medical file also revealed the applicant was under CID investigation for distributing drugs (LSD). The additional misconduct of selling drugs prompted the chain of command in the position to expedite the applicant's separation from service. Based on a preponderance of evidence, the Board determined the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. Four Board Members stated the totality of the information in the applicant's file demonstrated the chain of command did the right thing to separate the applicant based on multiple acts of misconduct to include a CID investigation for distributing drugs, which prompted the chain of command to separate the applicant with a GD / Pattern of Misconduct / JKA / RE-3. 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and 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.

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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:

9/25/2024

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