

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 4 May 2022**b. Date Received:** 16 May 2022**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable and a separation program designator (SPD) code change.

The applicant seeks relief contending, in effect, the characterization of service should have been honorable because the applicant's behavior was due to mental illness which was known by the Army. The applicant is currently receiving service-related benefits for the mental health conditions which led to the discharge.

**b. Board Type and Decision:** In a telephonic personal appearance conducted on 5 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Schizophrenia outweighing the applicant's AWOL, theft, and burglary offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and change to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

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

**b. Date of Discharge:** 9 December 2010

**c. Separation Facts:**

**(1) Date DD Form 458 (Charge Sheet):** Charge Sheet, 29 December 2010, reflects the applicant was charged with being absent without authority from on or about 21 October 2010 until on or about 16 November 2010; between on or about 7 October 2010 and on or about 11 October 2010, the applicant stole property of a value of about \$1,175, the property of Private/E-2 D; on or about 12 October 2010, stole property, to wit: \$40 the property of private/E-2 D; and on or about 7 October 210 and on or about 11 October 2010 unlawfully enter Room 133 of Building 39004, Fort Hood, Texas, the property of private/E-2 D, with the intent to commit a criminal offense, to wit: Larceny, therein..

(2) **Legal Consultation Date:** On 30 November 2010, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200, Chapter 10, for charges preferred against the applicant under the Uniform Code of Military Justice.

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

(4) **Recommended Characterization:** Under Other Than Honorable Conditions

(5) **Separation Decision Date / Characterization:** 2 December 2010 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 6 July 2006 / 6 years

b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 111

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 68A10, Biomedical Equipment Specialist / 4 years, 3 months, 22 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Iraq (15 December 2008 – 14 December 2009)

f. **Awards and Decorations:** ICM-CS-2, ARCOM, AAM, AGCM, NDSM, GWOTSM, NCOPDR, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** DA Form 4197 (Personnel Action), 21 October 2010, reflects the applicant's duty status changed from "Present for Duty" (PDY) to "Absent Without Leave" (AWOL), effective 20 October 2010; from AWOL to Military Confinement, effective 16 November 2010; and from Military Confinement to Release to Unit, effective 2 December 2010.

i. **Lost Time / Mode of Return:** 43 days total lost time, AWOL X 28 days (20 October 2010 – 16 November 2010) / Apprehended; Confinement X 15 days (17 November 2010 – 1 December 2010) / Released

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

(1) **Applicant provided:** The applicant provides evidence from the Department of Veteran Affairs (VA) which reflects the applicant has a service-connected disability rating. The provided documents are illegible as it pertains to the reason(s) for the applicant disability rating.

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293, VA Letter, 8 March 2022, VA Form 21-22 (Appointment of Individual as Claimant's Representative), Attorney statement.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution

shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

**c.** Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

**d.** Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

**(1)** Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

**(2)** Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

**(3)** Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

**(4)** Paragraph 3-7c states Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

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

**(6)** Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II).

**(7)** Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

**e.** Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.

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

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

The applicant requests the SPD code be changed. The applicant was separated under the provisions of AR 635-200, Chapter 10, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this chapter is "In Lieu of Trial by Court-Martial" and the separation code is "KFS." Army Regulation 635-8, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other SPD code to be entered under this regulation.

The applicant contends the characterization of service should have been honorable because the applicant's behavior was due to mental illness which was known by the Army. The applicant's AMHRR is void of evidence reflecting the applicant was diagnosed with a mental health issue.

The applicant contends the applicant is currently receiving service-related benefits for the mental health conditions which led to the discharge. The applicant provides evidence from the VA which reflects the applicant has a service-connected disability rating. The provided documents are illegible as it pertains to the reason(s) for the applicant disability rating.

**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):** N/A.

**c. Counsel / Witness(es) / Observer(s):** Applicant and counsel (Ms. T.M.) provided oral arguments in support of the contentions they provided in their written submissions and in support of their documentary evidence.

**10. BOARD DISCUSSION AND DETERMINATION:**

**a.** As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: the applicant held in-service diagnoses of Anxiety Disorder and Social Phobia with possible indications of prodromal (early) thought/psychotic symptoms. Post-service, the applicant is service connected for Schizophrenia, Disorganized.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Anxiety Disorder and Social Phobia with possible indications of prodromal (early) thought/psychotic symptoms.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that Thought disorders and psychosis, even in the initial phases, include paranoia and delusions that contribute to poor decision making. Specific to the applicant, the applicant thought Command was the Anti-Christ and sought to escape the situation, i.e. AWOL. In terms of the breaking and entering and larceny, while the sworn statements reflect a level of intact cognitive processes on the surface, the applicant was still exhibiting some prodromal symptoms which more likely than not increased the ability to justify the applicant's choice overriding social norms and consequences. Therefore, the misconduct is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Schizophrenia outweighed the applicant's AWOL, theft, and burglary offenses.

**b. Response to Contention(s):**

(1) The applicant contends the characterization of service should have been honorable because the applicant's behavior was due to mental illness which was known by the Army. The Board liberally considered this contention and determined that the applicant's Schizophrenia outweighed the applicant's AWOL, theft, and burglary offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the applicant is currently receiving service-related benefits for the mental health conditions which led to the discharge. The Board considered this contention during proceedings but ultimately did not address the applicant's VA status due to an upgrade being granted on the basis of medical mitigation.

**c.** The Board determined the discharge is inequitable based on the applicant's Schizophrenia outweighing the applicant's AWOL, theft, and burglary offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and change to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Schizophrenia outweighing the applicant's AWOL, theft, and burglary offenses. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

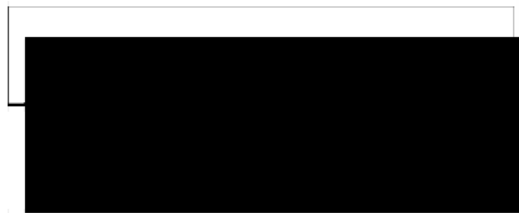
(3) The RE code will not change due to the applicant's behavioral health condition. The current code is consistent with the procedural and substantive requirements of the regulation.

**11. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

3/12/2024



**Legend:**

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

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

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

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