

**1. Applicant's Name:**

- a. **Application Date:** 13 July 2022
- b. **Date Received:** 13 July 2022
- 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 along with a reentry (RE) code, separation program designator (SPD) code and a narrative reason change. The applicant also requests removal of derogatory information from personnel file.

The applicant seeks relief contending, in effect, the misconduct which led to the separation was due to mental health issues. The applicant has been service-connected and diagnosed with post-traumatic stress disorder (PTSD) and traumatic brain injury. The applicant contends the applicant was not allowed to have a complete physical and psychological evaluation during the discharge procedure. The applicant should have been medically discharged instead of being administratively discharge. The applicant suffers from a number of service-related issues and is now 100 percent disabled. The applicant states the applicant has lost jobs and missed out on career opportunities due to the UCMJ and discharge.

b. **Board Type and Decision:** In a records review conducted on 13 December 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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 12 December 2008

c. **Separation Facts:**

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

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed to go the appointed place of duty on several occasions; was derelict in duty; committed forgery; left appointed post; disobeyed an order; wrongfully wore an award; and made a false official statement.

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

(4) **Legal Consultation Date:** 9 October 2008

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

**(6) Separation Decision Date / Characterization:** NIF / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 4 October 2006 / 6 years

**b. Age at Enlistment / Education / GT Score:** 23 / HS Graduate /112

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 42A1S, Human Resources Specialist / 5 years, 10 months, 1 day

**d. Prior Service / Characterizations:** RA, 12 February 2003 – 3 October 2006 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (22 May 2006 – 11 November 2006), 11 November 2004 – 1 April 2005), (2 December 2007 – 11 November 2008)

**f. Awards and Decorations:** PH, ARCOM-2, AAM-3, AGCM, NDSM, ICM-CS-2, GWOTEM, GWTSM, VUA-2, MUC, ASR, OSR, CAB

**g. Performance Ratings:** 1 March 2008 – 15 July 2008 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** CG Article 15, 27 February 2007, reflects the applicant wrongfully and without authority wear an award on the uniform on or about 16 February 2007; was derelict in the performances of duty on or about 4 February 2007, the applicant failed to obey a lawful order on or about 4 February 2007; and on or about 4 February 2007, the applicant made a false official statement. The punishment consisted of reductio to private first class/E-3, suspended, to be automatically remitted if not vacated before 28 March 2007; forfeiture of \$403, suspended, to be automatically remitted if not vacated 28 March 2007; and extra duty and restriction for 14 days. The punishment suspension was vacated due to the applicant failing to go to the appointed place of duty on or about 3 March 2007.

**(2)** FG Article 15, illegible, reflects the applicant, without authority, left the duty section with intent to abandon the same. The punishment consisted of reduction to the grade of specialist/E-4, suspended, to be automatically remitted if not vacated before 22 October 2008; forfeiture of \$1024 pay, suspended, to be automatically remitted if not vacated before 22 October 2008; and restriction and extra duty for 45 days. The was punishment suspension was vacated due to the applicant failing to go at the prescribed time to the appointed place of duty on or about 13 July 2008.

**(3)** FG Article 15, 14 August 2008, reflects on or about 8 August 2008, the applicant made a false official statement and on or about 12 April 2008, the applicant, while receiving special pay, left the post before being relieved. The punishment consisted of reduction to private first class/E-3; forfeiture of \$895 pay per month for two months, suspended, to be automatically remitted if not vacated by 10 January 2009; and extra duty and restriction for 45 days.

**(4)** The applicant was counseled on multiple occasions for various forms of misconduct.

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

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

**(1) Applicant provided:** The applicant provides a letter from the Department of Veteran Affairs (VA), 22 February 2017, reflects, in part, the applicant was awarded service-connection evaluation of 50-percent for PTSD, Chronic (formerly with insomnia and depressive disorder) now claimed as sleep disorder and impairment, agoraphobia, combat fatigue, and memory loss) and 30-percent for post-traumatic headaches with migraine and non-migrainous features. The applicant also provides other medical documents pertaining to the applicant mental and physical health issues.

**(2) AMHRR Listed:** Report of Behavioral Health Evaluation (BHE), 25 September 2008, reflects the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct and occupational problems.

**5. APPLICANT-PROVIDED EVIDENCE:** On-Line Application, DD Form 149-2, DD Form 293, DD Form 214, DD Form 215, Personal Statement, Awards, VA Doctor Letters, Medical Documents, Character Letters, Transcripts, Training Certificates, Sworn Statements, DA Form 638,-2, ERB, Order and other documents (282 total pages)

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant obtained a master's degree and is employed as a therapist/counselor.

**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.

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 "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.

f. 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.

**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 along with a RE code, SPD code, and a narrative reason change. The applicant further requests removal of derogatory information from the record. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant requests the narrative reason, SPD code, and RE code be changed. The applicant was separated under the provisions of AR 635-200, Chapter 14-12b, with a general (under honorable conditions), and a RE code of 3. The narrative reason specified by Army Regulations for a discharge under this chapter is "Pattern of Misconduct" and the separation code is "JKA." Army Regulation 635-5, 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 reason or SPD code to be entered under this regulation. 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.

The applicant contends the misconduct which led to the separation was due to mental health issues and the applicant has been service-connected and diagnosed with PTSD and traumatic brain injury. The applicant's AMHRR contains documentation which supports a diagnosis of in-service adjustment disorder with mixed disturbance of emotions and conduct and occupational problems. The record shows the applicant underwent a BHE on 25 September 2008, which reflects the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. The applicant provides a letter from VA, 22 February 2017, which reflects, in part, the applicant was awarded service-connection evaluation of 50-percent for PTSD, Chronic (formerly with insomnia and depressive disorder) now claimed as sleep disorder and impairment, agoraphobia, combat fatigue, and memory loss) and 30-percent for post-traumatic headaches with migraine and non-migrainous features. The applicant also provides other medical documents pertaining to the applicant mental and physical health issues.

The applicant contends the applicant was not allowed to have a complete physical and psychological evaluation during the discharge procedure and the applicant should have been medically discharged instead of being administratively discharge. The applicant suffers from a number of service-related issues and is now 100 percent disabled. The record shows the applicant underwent a BHE on 25 September 2008, which reflects the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible.

The applicant states the applicant has lost jobs and missed out on career opportunities due to the UCMJ and discharge. The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant states there was honorable service. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

The applicant's states the applicant obtained a master's degree and is employed as a therapist/counselor. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

In reference to the applicant's request for removal of derogatory information from the record, this request does not fall with this board's purview. This request will be answered by the Army Board for Correction of Military Records (ABCMR) under separate correspondence.

## **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 diagnoses: the applicant held in-service

diagnoses of ADHD, Adjustment Disorder, Major Depressive Disorder (MDD), post-concussive syndrome, Anxiety Disorder, and Personality Disorder. Post-service, service connected for PTSD and 10% for asserted TBI with no diagnosis.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of ADHD, Adjustment Disorder, Major Depressive Disorder (MDD), post-concussive syndrome, Anxiety Disorder, and Personality Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, avoidance, and difficulty with authority, the FTRs and disobeying orders would be mitigated. However, trauma is not associated with the other misconduct. Regarding the assertion of TBI, in-service, VA providers have ruled this diagnosis out. Moreover, in-service providers specifically assessed for this and determined the applicant was cognitively intact.

(4) Does the condition or experience outweigh the discharge? **No.**

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

(1) The applicant contends the misconduct which led to the separation was due to mental health issues and the applicant has been service-connected and diagnosed with PTSD and traumatic brain injury (TBI). The Board liberally considered this contention and given the nexus between trauma, avoidance, and difficulty with authority, the FTRs and disobeying orders would be mitigated. However, trauma is not associated with the other misconduct (dereliction of duty; forgery; desertion of guard post; wrongful wear of an award; and a false official statements). Regarding the assertion of TBI, in-service, VA providers have ruled this diagnosis out. Moreover, in-service providers specifically assessed for this and determined the applicant was cognitively intact.

(2) The applicant contends they were not allowed to have a complete physical and psychological evaluation during the discharge procedure and should have been medically discharged instead of being administratively discharged. The Board considered this contention but did not find sufficient evidence that a medical discharge would have been appropriate. The Separation Authority and behavior health evaluated the totality of the Soldier's misconduct when deciding to discharge them with a patterns of misconduct narrative reason.

**c.** The Board determined: The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant's post service connection for PTSD and self-asserted TBI which was later ruled out doesn't fully mitigate the misconduct. During service the applicant was specifically assessed for TBI and it was determined that they were cognitively intact. Due to the severity in the totality of the other misconduct, the Board voted that the partial mitigation of FTRs and disobeying orders did not outweigh the misconduct of dereliction of duty; forgery; desertion of guard post; wrongful wear of an award; and making false official statements. Therefore, the upgrade is not warranted. Based on the preponderance of the evidence presented, the Board determined that the reason for the applicant's separation and the character of service they received upon separation were proper and equitable.

**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

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20220009186

ADHD, Adjustment Disorder, Major Depressive Disorder (MDD), post-concussive syndrome, Anxiety Disorder, and Personality Disorder did not excuse or mitigate the offenses of dereliction of duty; forgery; desertion of guard post; wrongful wear of an award; and making false official statements. 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, 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:

2/14/2025

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