

1. Applicant's Name:

- a. **Application Date:** 14 December 2022
- b. **Date Received:** 19 December 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 seeks relief contending, in effect, the applicant was dealing with grief due to the loss of the applicant's spouse and separation from the applicant's child. The applicant tried to seek therapy but was denied. The chain of command showed no understanding of the situation and had no empathy or compassion. The unit was not understanding of the applicant's cultural differences and the language barrier made comprehension difficult. The unit took the applicant's cries for help as disrespect which led to the applicant being reprimanded and recommended for discharge. Prior to facing hardships and the loss of the applicant's spouse, the applicant was an exceptional Soldier. The applicant's discharge has denied the applicant's opportunities and potential ventures the applicant could have obtained. The applicant contends the applicant was not given the opportunity to seek legal counsel, nor was legal counsel present to review the applicant's case.

b. **Board Type and Decision:** In a records review conducted on 22 November 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:** 17 May 2022

c. **Separation Facts:** Provided by applicant.

(1) **Date of Notification of Intent to Separate:** 1 January 2022

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant displayed a pattern of misconduct and complete lack of respect for military authority.

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

(4) **Legal Consultation Date:** The applicant provides documents pertaining to Election of Right and Consultation with Counsel which are not signed. On 1 January 2022, the applicant signed a memorandum acknowledging receipt of notice from the applicant's commander

informing the applicant of the basis for the contemplated action to separate the applicant and the right available to the applicant. The applicant acknowledged the applicant had been advised of the right to consult with counsel prior to submitting the applicant's Election of Right. The applicant acknowledged the applicant understood failure to respond within 7 days would constitute a waiver of the rights in paragraph 6, 7, 8, and 9 of the notice.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization:

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 October 2020 / 2 years, 25 weeks

b. Age at Enlistment / Education / GT Score: 32 / Baccalaureate Degree / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92W10, Water Treatment Specialist / 1 year, 7 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A search of the Army criminal file indexes revealed no Domestic Violence records pertaining to the applicant.

(2) The applicant was counseled on more than one occasion for misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides a Rating Decision from the Department of Veteran Affairs, 13 September 2022, which reflects the applicant was granted service connection for unspecified depressive disorder with anxious distress granted with an evaluation of 70-percenr, effective 18 May 2022.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, personal statement, emails, court documents, Certificate of Birth, documents from separation packet, Couse by Course Evaluation Report, Letter from VA

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

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

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

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

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

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

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

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

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

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

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

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

The applicant's service AMHRR is void of the specific facts and circumstances concerning the events which led to his discharge from the Army, but the applicant provides documents from the separation packet.

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 waivable. Eligibility: Ineligible unless a waiver is granted.

The applicant contends the applicant was dealing with grief due to the loss of the applicant's spouse and separation from the applicant's child. The applicant tried to seek therapy but was denied. The chain of command showed no understanding of the situation and had no empathy or compassion. The unit was not understanding of the applicant's cultural differences and the language barrier made comprehension difficult. The unit took the applicant's cries for help as disrespect which led to the applicant being reprimanded and recommended for discharge. The applicant's AMHRR is void of a mental health diagnosis. The applicant provides a Rating Decision from the Department of Veteran Affairs, 13 September 2022, which reflects the applicant was granted service connection for unspecified depressive disorder with anxious distress granted with an evaluation of 70-percenr, effective 18 May 2022.

The applicant contends the applicant was not given the opportunity to seek legal counsel, nor was legal counsel present to review the applicant's case. The applicant provides evidence reflecting the applicant acknowledged the applicant had been advised of the right to consult with counsel prior to submitting the applicant's Election of Right. The applicant acknowledged the applicant understood failure to respond within 7 days would constitute a waiver of the rights in paragraph 6, 7, 8, and 9 of the notice. It appears the applicant did not respond within 7 days, which constituted a waiver of the applicant's rights.

The applicant states prior to facing hardships and the loss of the applicant's spouse, the applicant was an exceptional Soldier. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant states the discharge has denied the applicant's opportunities and potential ventures the applicant could have obtained. The Board does not grant relief to gain employment or enhance employment opportunities.

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: Post-service, they were service connected for Mood Disorder as a progression of depressive symptoms after the loss of their spouse in December 2021. Additional diagnoses are PTSD, onset February 2024, and Personality Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** Post-service, they were service connected for Mood Disorder as a progression of depressive symptoms after the loss of their spouse in December 2021.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's post-service diagnosis is not mitigating as it is tied to symptoms originating after the chapter process started. Additionally, the PTSD diagnosis is clearly noted to be as of February 2024. Moreover, documentation does not support impairment due to culture, language, or cognitive skills.

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

b. Response to Contention(s):

(1) The applicant contends the applicant was dealing with grief due to the loss of the applicant's spouse and separation from the applicant's child. The applicant tried to seek therapy but was denied. The chain of command showed no understanding of the situation and had no empathy or compassion. The unit was not understanding of the applicant's cultural differences and the language barrier made comprehension difficult. The unit took the applicant's cries for help as disrespect which led to the applicant being reprimanded and recommended for discharge. The Board considered this contention and recognized the applicant's mood disorder arose from the depression following their spouse's death, and the situation surrounding their discharge, but determined that these contentions do not mitigate the applicant's pattern of misconduct and insufficient documentation was provided to support impairment due to culture, language, or cognitive skills at the time of discharge.

(2) The applicant contends the applicant was not given the opportunity to seek legal counsel, nor was legal counsel present to review the applicant's case. The Board considered this and found that on 1 January 2022, the applicant signed a memorandum acknowledging receipt of notice from the commander informing the applicant of the basis for separation and the rights available to them. The applicant signed the memorandum acknowledging these rights and that failure to respond within 7 days would be considered a waiver of those rights.

c. The Board determined: The Board carefully considered the applicant's request, supporting documents, evidence in the records, medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board also 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 mitigation factors and concurred with the medical advisor that the applicant does not have a behavior health condition that mitigates the applicant's pattern of misconduct. The applicant's post-service diagnosis is not mitigated as it is tied to symptoms origination after the chapter process started. Based on this the Board determined that the applicant was properly and equitably discharged.

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 mood disorder did not excuse or mitigate the pattern of misconduct evidenced in the file. 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 an Honorable discharge.

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

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

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:

3/20/2025

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