

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 13 January 2023
- b. **Date Received:** 13 January 2023
- c. **Counsel:** None.

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 honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

The applicant states in effect, they reported two soldiers having sex and became the target for papa company. Their senior platoon sergeant was involved without them knowing they were involved in the sex traffic. They were a new soldier thinking they were doing the honorable thing, but they were harassed to the point that the local ombudsman and therapist had to become more diligent because of the abuse of power. The fact that they were young and injured made matters worse.

They served honorably and finished all of their education as a 92Y, they have grades and certifications, but their command was so upset that a one year soldier was not deserving of U.S Army retirement for their injury. They quote First Sergeant Rodriguez said they were not spoiling their record with a Puerto Rican that was not deserving to wear the uniform, and that they were a disgrace for the Army to retire them when they never went to combat. They deserve their honorable medical discharge; they were a good soldier and if given the opportunity they will show how honorable and dedicated they were as a soldier. Being 100 percent disability is proof that they should have been medically discharged. They do not want money from the Army, they just want their DD Form 214 to state the real reason why they are not serving in the best armed forces in the world. When they were escorted out with the paperwork, they knew they lied and were so afraid that they banned them from base even though they live in Puerto Rico. They spoke to the American Legion, and they explained that they were reversed discriminated against because their First Sergeant was Puerto Rican as well.

b. Board Type and Decision: In a telephonic appearance conducted on 1 July 2024, and by a 5-0 vote, the board determined the discharge is inequitable. The Board applied liberal consideration and the applicant's medical diagnosis (Adjustment Disorder, Depressed Mood, Generalized Anxiety Disorder) and assertion of harassment and abuse partially mitigates the misconduct (failure to report and disobeying orders by noncommissioned officers on multiple occasions). The remaining misconduct (selling pain medication) is not medically mitigated. However, the Board determined the issues of discrimination, harassment, and abuse also mitigated the remaining misconduct. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. Based on the applicant's medical diagnosis the board determined the reentry code was 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: Pattern of Misconduct / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General)

b. Date of Discharge: 25 February 2016

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 20 January 2016

(2) Basis for Separation: The applicant had shown a complete lack of respect, total disregard for authority and failed to live by Army values. They failed to report to their appointed place of duty and disobeyed orders by noncommissioned officers on multiple occasions. They failed to adhere to a lawful order issued by their Company Commander dated 25 September 2015, when they wrongfully used a recording device to secretly record conversations between noncommissioned officers without their consent.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: 20 January 2016

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 19 February 2016 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 March 2015 / 3 years, 21 weeks.

b. Age at Enlistment / Education / GT Score: 22 / Adult Alternate Education Diploma / 101

c. Highest Grade Achieved / MOS / Total Service: E-2 / None / 11 months, 10 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) Five Developmental Counseling statements provides the applicant were counseled for various acts of misconduct between 24 July 2015 – 23 November 2015.

(2) Record of Proceedings UCMJ dated 7 August 2015 provides the applicant received a NJP for violating Article 86 of the UCMJ. They failed to go at the time prescribed to their appointed place of duty. Punishment consisted of extra duty and post restriction for 14 days.

(3) Four Sworn Statements provides the applicant had phone recordings of their cadre and First Sergeant, they were selling their prescription Oxycodone pills to another service member, and they were seen doing activities which were not within the parameters of their permanent profile.

(4) On 1 October 2015 the applicant admitted to their immediate commander they took audio recordings of NCOs without their knowledge, additionally they admitted to regularly violating their medical profile and pretending to have pain and illness to shun lawful orders, and to dodge conducting PRT exercises.

(5) On 21 October 2015 the applicant received a NJP for violating Article 92 of the UCMJ. They failed to obey a lawful order by wrongfully using a recording device to secretly record conversations between noncommissioned officers without their consent on 25 September 2015. Punishment consisted of reduction in rank to E-1, forfeiture of \$773 pay, extra duty, and company restriction for 45 days.

(6) On 6 November 2015 the applicant was notified they were recommended for separation under the provisions of AR 635-200, CH 14-12b due to their multiple counseling's, summarized Article 15, and the Field Grade Article 15 they received.

(7) A Report of Mental Status Evaluation document dated 6 November 2015 provides the applicant received a separation mental health evaluation that cleared them for administrative separation proceedings.

(8) On 16 November 2015 the applicant was seen at the TMC (Treatment Medical Center) and were upset when their provider did not prescribe them narcotic medication for their pain.

(9) An Informal Physical Evaluation Board (PEB) Proceedings document dated 3 December 2015 provides the board found the applicant physically unfit and recommended a 10 percent rating and separation with severance pay.

(10) On 14 December 2015 the applicant received a NJP for violating Article 91 of the UCMJ on 16 November and on 23 November 2015. Punishment consisted of forfeiture of \$360 pay, extra duty, and company restriction for 14 days.

(11) On 20 January 2016 the applicant's immediate commander notified them of their intent to separate them for Patterns of Misconduct. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service of less than honorable.

(12) On 20 January 2016 the applicants command team requested recall of their medical retirement and transition processing.

- They received a final disability rating from the PEB
- Medical retirement date was set for no later than 15 March 2016

(13) On 18 February 2016 the Major General directed further processing of the administrative proceedings and directed termination of all disability processing. On 19 February 2016 the appropriate authority approved the separation and directed a general, under honorable conditions characterization of service.

(14) On 19 February 2016 the applicant's Physical Evaluation Board was administratively terminated by the United States Army Physical Disability Agency.

(15) A Certificate Of Release Or Discharge From Active Duty document provides the applicant was discharged on 25 February 2016, they completed 11 months, and 10 days of their contractual obligation.

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

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

(1) **Applicant provided:** None.

(2) **AMHRR Listed:** Adjustment Disorder with Mixed Anxiety and Depressed Mood.

5. **APPLICANT-PROVIDED EVIDENCE:** An online DD Form 293 (Discharge Review) application.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted in support of their petition.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in

whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

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

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

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

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(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. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline.

(6) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct

g. 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 waivable and nonwaivable 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.

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

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

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

b. Based on the available evidence while in AIT the applicant's medical board process was started due to their chronic pain that led to a permanent medical profile. During and before the medical board process was initiated the applicant was counseled for various acts of misconduct; they received three NJP'S in 2015. The applicant was notified they were being processed for administrative separation 27 days before the PEB found them physically unfit.

c. The applicant was notified of the intent to separate them for patterns of misconduct and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12b. The appropriate authority approved processing of the administrative separation and directed termination of the disability process. The applicant consulted with military counsel and received the required health and mental health separation examinations that cleared them for administrative separation.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of

misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. 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):** N/A

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/experiences: Adjustment Disorder with Anxiety and Depressed Mood and Generalized Anxiety Disorder with abuse by unit leaders.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder with Anxiety and Depressed Mood and reported abuse by unit occurred during military 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 the applicant's assertion of harassment and abuse is partially mitigating. These experiences can result in avoidance, difficulty with authority, documenting harassment/abuse even if unauthorized, and otherwise presenting as a poor Soldier in multiple ways. However, if part of the basis included selling pain medication that would not be mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the applicant's Adjustment Disorder with Anxiety, Depressed Mood did not fully outweigh the basis of separation. The misconduct of selling pain medication is not medically mitigated.

b. Response to Contention(s):

(1) The applicant contends they were harassed. The board found this contention valid and voted to upgrade the applicant's discharge.

(2) The applicant contends receiving 100 percent disability is proof that they should have been medically retired. The board considered this contention and voted to upgrade the applicant's discharge.

c. The Board determined the discharge is inequitable based on the applicant's medical diagnosis (Adjustment Disorder, Depressed Mood, Generalized Anxiety Disorder) and applicant's assertion of harassment and abuse which partially mitigates the misconduct (failure to report and disobeying orders by noncommissioned officers on multiple occasions). The remaining misconduct (selling pain medication) is not medically mitigated. However, the Board determined the experiences of discrimination, harassment, and abuse also mitigated the remaining misconduct (selling pain medication) and determined an upgrade is warranted. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and no change to the reentry eligibility code.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to honorable based on the applicant's medical diagnosis (Adjustment Disorder, Depressed Mood, Generalized Anxiety Disorder) and the applicant's experiences of discrimination, harassment, and abuse. The Board determined the medical diagnosis and issues of discrimination, harassment and abuse mitigated the applicant's misconduct (lack of respect and disregard for authority, failure to live by Army values, failure to report to appointed place of duty, disobeying lawful orders by noncommissioned officers on multiple occasions, wrongfully used a recording device to secretly record conversations without consent, and failure to adhere to a lawful order issued by the Company Commander). Thus, the prior characterization is no longer appropriate.

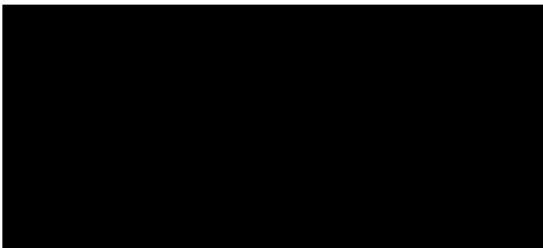
(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

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

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:



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