

1. Applicant's Name:

- a. **Application Date:** 2 January 2023
- b. **Date Received:** 11 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 Uncharacterized. The applicant requests an upgrade to General (Under Honorable Conditions) and a change to their narrative reason.

b. The applicant seeks relief contending, they have since matured and have a job with the Department of Corrections, where they have been promoted to sergeant, and currently trying to get a job with a local county jail.

c. **Board Type and Decision:** In a personal appearance conducted on 1 July 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

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, Chapter 14-12B / JKA / RE-4 / Uncharacterized

b. **Date of Discharge:** 21 November 2018

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 31 October 2018

(2) **Basis for Separation** wrongfully said racial slurs directed at other fellow trainees in violation of Equal Opportunity (EO) to include the words, "n****r" and "s****k," or words to that effect; was also counseled on numerous occasions regarding threatening other trainees

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** Waived on 31 October 2018.

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

(6) **Separation Decision Date / Characterization:** 14 November 2018 / Uncharacterized

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 14 August 2018 / 6 years, 19 weeks

- b. **Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 103
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 (PVT) / None / 3 months, 8 days.
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 14 August 2018, the applicant enlisted in the Regular Army for 6 years and 19 weeks as a PVT (E-1). The Enlisted Record Brief indicates the applicant was awarded their National Defense Service Medal; however, it is not on their DD Form 214 (Certificate of Release or Discharge from Active Duty).

(2) On 11 September 2018, the applicant accepted nonjudicial punishment in violation of Article 134, UCMJ, with four specifications: for having wrongfully said racial slurs directed at other fellow trainees, to wit: “[The applicant] has been heard saying the inappropriate words that violate EO to include the word, “n****r” and “s***k,” or words to that effect, being prejudicial to good order and discipline in the Armed Forces and being of a nature to bring discredit upon the Armed Forces on or about 14 – 31 August 2018.

(a) On or about 14 August 2018, on divers’ occasions, the applicant orally communicated to other fellow trainees, certain indecent language, to wit: “Calling them “cute,” “pretty,” and “Suck [their] d**k,” being prejudicial to good order and discipline in the Armed Forces and being of a nature to bring discredit upon the Armed Forces.

(b) On or about 14 – 31 August 2018, wrongfully communicated to other fellow trainees, a threat, to wit: “Kick [their] a*s,” or “Beat [their] a*s,” or words to that effect, being prejudicial to good order and discipline in the Armed Forces and being of a nature to bring discredit upon the Armed Forces.

(c) On or about 14 – 31 August 2018, wrongfully communicated to other fellow trainees, a threat, to wit: “To file falsified EO/SHARP violation reports,” or words to that effect being prejudicial to good order and discipline in the Armed Forces and being of a nature to bring discredit upon the Armed Forces.

(d) They did not appeal. The punishment-imposed forfeiture of 7 days of pay; 14 days of extra duty; and 14 days restriction – no cell phone.

(3) On 31 October 2018, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12b, Pattern of Misconduct, with an Uncharacterized characterization of service, for having wrongfully said racial slurs directed at other fellow trainees, to wit, “[The applicant] has been heard saying the inappropriate words that violate EO to include the words, “n****r” and “s***k,” or words to that effect, being prejudicial to good order and discipline in the Armed Forces on or about 14 – 31 August 2018, which was in violation of Article 134, UCMJ. [They] were also counseled on numerous occasions regarding

threatening other trainees and [they] made no effort to reform [their] behavior. The applicant acknowledged receipt of their separation notice. They elected to waive their right to legal and elected not to submit a statement on their behalf.

(4) On 8 November 2018, the battalion commander concurred with the company commander's recommendation. On 14 November 2018, the separation approval authority approved the discharge, with an Uncharacterized characterization of service.

(5) 19 November 2018, their separation orders were issued. A DD Form 214 reflects the applicant was discharged accordingly on 21 November 2018, with 4 months and 11 days of total service. The applicant provided their electronic authentication and has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:**

- Application for Correction of Military Record
- Department of Corrections Certificate of Training

6. **POST SERVICE ACCOMPLISHMENTS:** The applicant has since matured and has a job with the Department of Corrections, has promoted to sergeant, and they are trying to get a job with a local county jail.

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 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) 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 is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) 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 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 14-12B, 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:

(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 waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable 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.

g. Manual for Courts-Martial (2016 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 134 (indecent conduct) states in subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

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 General Under Honorable Conditions) and a change to their narrative reason. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA as a PVT and was at basic training when they received NJP for having wrongfully said racial slurs at their fellow trainees, along with threatening individuals, and inappropriately telling trainees to suck their genitals. As a result, they were placed on restriction, given extra duty, and forfeited a week of pay. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12b, Pattern of Misconduct. The applicant served on continuous active duty for a period of 98 days, in which their entry-level status was given an Uncharacterized characterization of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members 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.

d. Published DoD 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge?
N/A

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

b. **Response to Contention(s):** The applicant seeks relief contending, they have since matured and have a job with the Department of Corrections, where they have been promoted to sergeant, and currently trying to get a job with a local county jail. The board considered the totality of the applicant's record and post service accomplishments and determined the discharge was appropriate. The applicant committed the following offenses: violation of EO Policy (wrongfully using racial slurs directed at other trainees) and threatened fellow trainees with violence. The board determined the applicant diminished the quality of service below that meriting an honorable discharge. Additionally, the board does not grant relief in order to gain employment or enhance employment opportunities.

c. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable

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 submitted by the applicant, the board found insufficient evidence of in-service mitigating factors and the applicant does not have a behavioral health condition that mitigates the misconduct of violating EO Policy (wrongfully using racial slurs directed at other trainees) and threatening fellow trainees with violence. 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.

11. 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:

7/31/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

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

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

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

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