

1. Applicant's Name:

- a. **Application Date:** 23 May 2023
- b. **Date Received:** 1 June 2023
- 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 Bad Conduct. The applicant requests an upgrade to Honorable and changes to the SPD and RE codes.

b. The applicant seeks relief contending, in effect, the punishment was extremely excessive for their actions. The applicant is unable to receive medical benefits from the VA. The applicant never got in trouble with the law before or after the military and would like to reenlist to show that they are not a troubled soldier anymore.

c. **Board Type and Decision:** In a records review conducted on 1 April 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:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. **Date of Discharge:** 30 July 2021

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 1, 6 March 2020, on 2 April 2020, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, 17 December 2020, the applicant was found guilty of the following:

(a) Charge I, in violation of Article 86, Plea: Not Guilty. Finding: Guilty.

- Specification 1: On or about 14 September 2017, failed to go at the time prescribed to their appointed place of duty
- Specification 2: On or about 14 November 2017, failed to go at the time prescribed to their appointed place of duty
- Specification 3: On or about 6 December 2017, failed to go at the time prescribed to their appointed place of duty

(b) Charge II, in violation of Article 91, Plea: Not Guilty. Finding: Guilty.

- Specification 1: On or about 30 August 2017, willfully disobeyed a lawful order from a noncommissioned officer (NCO)

- Specification 2: On or about 14 November 2017, was disrespectful in deportment toward a NCO by walking away and not going to "parade rest" as ordered
- Specification 3: On or about 5 December 2017, willfully disobeyed a lawful order from a NCO
- Specification 4: On or about 27 March 2018, willfully disobeyed a lawful order from an NCO
- Specification 5: On or about 27 March 2018, was disrespectful in language toward an NCO by saying "Hey Sergeant, why do I have to take it out of my mouth?" and "I don't think it works like that Sergeant," or words to that effect
- Specification 6: On or about 29 March 2018, willfully disobeyed a lawful order from an NCO
- Specification 7: On or about 27 March 2018, was disrespectful in deportment toward an NCO by walking away while being spoken to

(c) Charge III, in violation of Article 92, Plea: Not Guilty. Finding: Guilty.

- Specification 1: On or about 15 November 2017, was derelict in the performance of their duties in that the applicant, by culpable inefficiency, failed to have their ceramic plates in their improved outer tactical vest
- Specification 2: On or about 3 March 2018, failed to obey a lawful general regulation by wrongfully transporting a firearm in their vehicle while on the Fort Campbell military reservation

(d) Charge IV, in violation of Article 117, Specification: On or about 7 December 2017, wrongfully used provoking words, to wit; "you can't make me do anything anymore. I'm not going to listen to you," and "the only reason I haven't done anything about this yet is I have a son," and in response to a NCO's questions stated "you can take it how you want, but don't try me" or words to that effect. Delete "you can't make me do anything anymore. I'm not going to listen to you." (per Notice of Court-Martial Order Correction, 17 December 2020) Plea: Not Guilty. Finding: Guilty.

(e) Additional Charge I, in violation of Article 90, Plea: Not Guilty. Finding: Guilty.

- Specification 1: On or about 31 August 2018, willfully disobeyed a lawful command from a commissioned officer
- Specification 2: On or about 1 September 2018, willfully disobeyed a lawful command from a commissioned officer
- Specification 3: On or about 2 September 2018, willfully disobeyed a lawful command from a commissioned officer
- Specification 4: On or about 3 September 2018, willfully disobeyed a lawful command from a commissioned officer

(f) Additional Charge II, in violation of Article 91, Specification: On or about 7 August 2018, assault a NCO by shoving their elbow into the NCO's chest. Plea: Not Guilty. Finding: Guilty.

(g) Additional Charge III, in violation of Article 134, Specification: On or about 7 August 2018, disorderly, to wit: stating "what if I knock this nigga out" or words to that effect, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Guilty.

(2) **Adjudged Sentence:** On 2 April 2019, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, 17 December 2020, reduction from E-3 to

E-1, forfeiture of \$1,120.00 pay per month for 3 months, confinement for 90 days, and a Bad Conduct discharge.

(3) Date / Sentence Approved: 6 March 2020 / Only so much of the sentence, a reduction E-1, confinement for 60 days, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 25 July 2021

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 September 2015 / 3 years and 23 weeks

b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 87

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92F10, Petroleum Supply Specialist / 5 years, 8 months, and 17 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) Report of Result of Trial shows the applicant was tried in a Special Court-Martial on 1 April 2019. The applicant was charged with 18 specifications.

(a) The offenses, pleas, and findings are the same as described in Special Court-Martial Order Number 1, 6 March 2020, in paragraph 3c above.

(b) Sentence: Reduction from E-3 to E-1, forfeiture of \$1,120.00 pay per month for 3 months, and confinement for 90 days, and a Bad Conduct discharge.

(2) Two Personnel Action forms, shows the applicant's duty status changed as follows:

- From Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 4 April 2019; and
- From CMA to PDY, effective 15 June 2019

(3) The applicant's Enlisted Record Brief, 7 May 2019, shows the applicant was flagged for punishment phase (HA) for an adverse action, effective 2 April 2019, and adverse action (AA), effective 30 July 2018; and received a Field Bar to Continued Service (9K). The Assignment Eligibility Availability (AEA) code shows AEA code "C" which is temporarily ineligible for reassignments due to medical, convalescence, confinement due to trial by court martial,

enrollment in Track III ASAP, or local bar to reenlistment. The applicant was reduced from E-3 to E-1 effective 16 April 2019.

(4) Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK, Special Court-Martial Order Number 1, 25 June 2021, shows the applicant was sentenced to reduction to E-1, confinement for 60 days, and a bad conduct discharge, adjudged on 2 April 2019, as promulgated in Special Court-Martial Order Number 1, Headquarters, Fort Campbell, Fort Campbell, KY, 6 March 2020, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, 17 December 2020, was finally affirmed. All rights, privileges, and property, of which the accused was deprived by virtue of the finding of guilty set aside, would be restored. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with; the bad conduct discharge was ordered executed.

(5) Orders 204-1319, 23 July 2021, shows the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 30 July 2021 from the Regular Army.

i. **Lost Time / Mode of Return:** CMA, 2 April - 14 June 2019 (74 days) / Released from Confinement

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

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 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(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) A Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

(5) A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

(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 635-5-1 (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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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.

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 and changes to the SPD and RE codes. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 5 years, 8 months, and 17 days during this time it took 2 years, 1 month, and 17 days for the appellate review to be completed and the affirmed sentence to be ordered duly executed. The applicant's approved sentence was reduction from E-3 to E-1, forfeiture of \$1,120.00 pay per month for 3 months, confinement for 90 days, and a Bad Conduct discharge for the reasons in paragraph 3c(1) above. The applicant was discharged on 30 July 2021 under the provisions of AR 635-200, Chapter 3, by reason of Court-Martial (Other), with a characterization of service of Bad Conduct.

c. The applicant's AMHRR indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

d. The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

e. The applicant requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 3, for "Court-Martial (Other)" is "JJD."

f. The applicant requests the RE code to be changed. The applicant would like to reenlist to show that they are not a troubled soldier anymore. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

g. The applicant contends, in effect, the punishment was extremely excessive for their actions. Manual for Courts-Martial (MCM) 2019 contains the maximum punishment allowed for each Article violated (see MCM 2019 Extract PDF). The applicant's AMHRR contains a DA Form 4430 (Report of Result of Trial), 1 April 2019, that shows the applicant violated Articles 86, 90, 91, 92, 117 and 134 with 18 specifications.

h. The applicant contends they are unable to receive medical benefits from the VA. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

i. Analyst notes the applicant checked the PTSD, other mental health, and the sexual assault/harassment boxes on the DD Form 293. The Military Review Boards representative emailed the applicant on 11 March 2024 requesting medical documentation to support the applicant's PTSD and other mental health claims, and an explanation for the sexual assault/harassment claim. There has been no response from the applicant as of 25 March 2024.

j. 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):** None

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None

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: The applicant held an in-service diagnosis of Adjustment Disorder with notation of likely Personality Disorder. While the applicant marked the PTSD/OBH/MST boxes, there is no reference/discussion of these or documentation by the applicant.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder with notation of likely 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 the available diagnosis does not mitigate the extensive and persistent misconduct with documentation reflecting full awareness of actions and consequences. Additionally, documentation does not support the presence of any other behavioral health condition that went undiagnosed.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did not outweigh the basis of separation.

b. **Prior Decisions Cited:** None

c. **Response to Contentions:**

(1) The applicant contends, in effect, the punishment was extremely excessive for their actions.

The Board considered the totality of the applicant's record, including the applicant's BH condition and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct.

(2) The applicant contends they are unable to receive medical benefits from the VA. The Board determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service based on the following reasons. The applicant has an in-service diagnosis of Adjustment Disorder. The Board's Medical Advisor applied liberal consideration and opined that conditions arising from the misconduct are not mitigating; they were not present pre-misconduct as an influencing factor. The Board members carefully considered the applicants request, supporting documents, evidence in the records and medical review recommendation. However, based on the non-BH mitigation of the misconduct because the Adjustment DO was a secondary arousal from the misconduct and the applicant's inability to prove beyond reasonable doubt the misconduct warranted an upgrade, the Board concurred the current discharge, separation and RE code are appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, and 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:

5/31/2024

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