

1. Applicant's Name:

- a. **Application Date:** 5 October 2023
- b. **Date Received:** 23 October 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 under honorable conditions (general). The applicant requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, their service connected disability has progressed and they need more VA assistance. They separated from the military with a compression boot on their right leg, they were on medications for 8 months and it made them sick and caused issues with them making it to formations on time. They were written up for sleeping and their first sergeant made them do duties while on crutches that they were not supposed to do, additionally they made it so they would be kicked out of the military with no reenlistment opportunity. They were not given proper care and were forced to miss their rehabilitation at the hospital. They were kicked out of the military on bad terms which were made up by their first sergeant.

b. **Board Type and Decision:** In a records review conducted on 25 September 2024, and by a 4-1 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.

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:** 10 December 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 November 2010

(2) **Basis for Separation:** The applicant's previous misconduct, and on 6 October, 7 October, and 21 October 2010 they failed to report to accountability formation. Their misconduct came at the end of a counseling period marked by a Bar to Reenlistment dated 18 May 2018, in which they were instructed they had 180 days to correct their deficiencies.

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

(4) **Legal Consultation Date:** Waived: 30 November 2010.

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 2 December 2010 / General, under honorable conditions.

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 10 June 2008 / 3 years
- b. Age at Enlistment / Education / GT Score:** 18 / 4 Years High School / 89
- c. Highest Grade Achieved / MOS / Total Service:** E-2 / 88H10 Cargo Specialist / 2 years, 6 months, 1 day.
- d. Prior Service / Characterizations:** None.
- e. Overseas Service / Combat Service:** None.
- f. Awards and Decorations:** AAM, NDSM, GWTSM, HSM, ASR
- g. Performance Ratings:** N/A
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) Eighteen Developmental Counseling Forms provided between 8 January 2010 – 21 October 2010 the applicant failed to report (FTR) to their place of duty thirteen times, they were underage drinking, disobeyed a lawful order, and was disrespectful to a noncommissioned officer.

(2) On 18 May 2010 a Bar to Reenlistment was initiated, the applicant failed to meet Army standards and displayed patterns of misconduct. They had 180 days to correct their deficiencies.

(3) Record of Proceedings UCMJ dated 28 July 2010 provides the applicant received a NJP for violating Articles 91, 92 and three specifications of Article 86 of the UCMJ. On 24 June 2010 they were disrespectful in language towards a noncommissioned officer and failed to obey a lawful order. Additionally, they failed to go to their appointed place of duty on 7 July, 8 July, and 14 July 2010. Punishment consisted of a reduction in rank to E-1, forfeiture of \$338 pay for one month, extra duty and restriction for 14 days.

(4) On 23 November 2010 the applicant received a NJP for violating Article 86 of the UCMJ three times on 6 October, 7 October, and 21 October 2010. They failed to go to their appointed place of duty at the time prescribed. Punishment consisted of forfeiture of \$100 pay for two months, and restriction for 10 days.

(5) On 29 November 2010 the applicant's immediate commander notified them of their intent to separate them for patterns of misconduct with a recommended characterization of service of General (under honorable conditions). The applicant acknowledged the commander's notification and basis for separation, they waived consulting 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.

(6) On 1 December 2010 the chain of command endorsed and concurred with the commander's discharge recommendation and on 2 December 2010 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(7) A Certificate of Release or Discharge from Active Duty document provides the applicant was discharged on 10 December 2010, they completed 2 years, 6 months, and 1 day of their contractual obligation.

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

j. **Behavioral Health Condition(s):** None.

(1) **Applicant provided:**

(2) **AMHRR Listed:**

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Record Review) application.

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

(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. 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 the applicant enlisted in the army at the age of 18, during their last year in the Army they were counseled for various acts of misconduct, which included failure to report on numerous occasions. The applicant received two non-judicial punishments and was processed for administrative separation after they did not correct their deficiencies in 180 days. Evidence provides the applicant had a foot injury.

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 applicant waived consulting with counsel and the appropriate authority approved the separation. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 10 December 2018.

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. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: The applicant is post-

service connected for PTSD with additional diagnosis of Personality Disorder (Antisocial).

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant's Personality Disorder existed prior and during service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the service connected trauma occurring before or during the misconduct, misconduct secondary to substance misuse, and nexus between trauma and substance related misconduct, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the medically unmitigated list offenses (failure to report, underage drinking, disrespect toward an NCO, and disobeying a lawful order).

b. Prior Decisions Cited: None.

c. Response to Contentions:

(1) The applicant contends they were on medication that caused issues with them making it to formation on time.

The Board considered this contention and determined that the applicant was not on medication that caused him to miss formations. In-service, he asserted missing or being late to formation because he was hung over from drinking, not due to medical reasons.

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. The board considered the extensive misconduct in the file and decided the totality of the misconduct did not warrant an upgrade to Honorable. The Board also noted the extensive misconduct in the file and believed an Honorable discharge was not warranted. Along with the basis for separation (multiple FTR and disrespect to an NCO), the applicant received multiple Art 15 for fighting, underage drinking, and disobeyed a lawful order. The applicant refused physical therapy because attending a residential program had restrictions; he "would be giving up the clubs and parting" which further demonstrated the applicant did not want to make improvements. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No change
- c. Change Reason / SPD code to:** No change
- d. Change RE Code to:** No change
- e. Change Authority to:** No change

Authenticating Official:

10/1/2024

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