

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change to the narrative reason for separation to "Secretarial Authority."

The applicant seeks relief contending, in effect, Army Regulation 635-200, paragraph 5-13, clearly applied at the time of the applicant's involuntary separation from active duty. The applicant was suffering from severe combat-related post-traumatic stress disorder (PTSD). Although the cited paragraph contemplates separation because of personality disorder, it clearly requires a medical review of the personality diagnosis will consider whether PTSD may be a significant contributing factor to the diagnosis. This same paragraph provides that if PTSD is a significant factor in a diagnosis of personality disorder, the service member will be evaluated under the physical disability system in accordance with AR 635-40 and will not be processed for administrative separation under this paragraph. For this reason, the applicant's discharge was in violation of the above-cited regulation and a wrongful discharge, as addressed by the federal courts in similar cases. Memorandum of Employment Verification, 21 September 2012, from the Transportation Cabinet of the State of Kentucky, reflects the has been employed as an accountant since 1 February 2006, and describes the applicant's work ethic as "exceeding expectations," and "works with little supervision," among other attributes. The applicant's characterization of service should be upgraded to honorable and the narrative reason for separation changed to "Secretarial Authority." Counsel and the applicant further detail the contentions in Legal Brief and Digital Privacy Release Form submitted with the application, including the contention the Department of Veterans Affairs (VA) rated the applicant 100 percent disabled for PTSD.

**b. Board Type and Decision:** In a records review conducted on 17 October 2024, and by a 3-2 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 30 November 2005

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 8 November 2005

**(2) Basis for Separation:** The applicant was informed of the following reasons: On 3 October 2005, the applicant made the statement the applicant wanted to kill First Sergeant (1SG) S. and maim Command Sergeant Major (CSM) J., by shooting CSM J. in the legs and gouging out CSM J.'s eyes. In June 2005, the applicant locked and loaded their weapon while in the barracks area of their forward operating base, violating general order number one by Commander, Combined Joint Task Force (CJTF).

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

**(4) Legal Consultation Date:** In an undated letter, the applicant waived legal counsel.

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

**(6) Separation Decision Date / Characterization:** 15 November 2005 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 16 January 2003 / 3 years

**b. Age at Enlistment / Education / GT Score:** 26 / Bachelor's Degree / 127

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1P, Infantryman / 2 years, 10 months, 15 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Afghanistan (8 April 2005 – 11 July 2005); Iraq (6 September 2003 – 6 September 2004)

**f. Awards and Decorations:** CIB, ARCOM, AAM, NDSM, ASR, ACM, GWOTSM, ICM / The applicant's AMHRR reflects award of a two ARCOMs; however, the second award is not reflected on the applicant's DD Form 214.

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Developmental Counseling Form, 5 October 2005, for being restricted after making homicidal threats towards two senior noncommissioned officers in the unit.

Memorandum, 18 October 2005, reflects the applicant was restricted to the limits of the battalion, to wear the Battle Dress Uniform or Physical Training Uniform, was not authorized to drive a motor vehicle, and on duty days was ordered to sign in at the Staff Duty Desk.

Memorandum, 31 October 2005, reflects the applicant was evaluated by Division Mental Health and because of the applicant's suicidal and homicidal ideations and emotional state, a psychologist recommended increased supervision.

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

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

**(1) Applicant provided:** Chronological Record of Medical Care, 27 July 2005, reflecting the applicant's problems as occupational problem; acute PTSD; and depression; major depression, recurrent.

Report of Mental Status Evaluation, 3 October 2005, reflecting the applicant could understand and participate in administrative proceedings and was mentally responsible. The applicant was diagnosed with PTSD and antisocial personality disorder. The Mental Health providers recommended separation under AR 635-200, paragraph 5-13 or through other administrative means deemed appropriate by the command.

Discharge Summaries, 28 October 2011, reflecting the applicant was diagnosed with PTSD; alcohol dependence, previously sober for 13 years, relapse in 2011; major depression disorder (MDD), severe with psychotic features per history; antisocial personality disorder per history; exposure to combat zone, relationship with spouse and family; chronic psychiatric symptoms; and global assessment of functioning (GAF) scores of 20 on admission and 45 on discharge.

Renewed Hope, 17 January 2012, reflecting the had been treated for PTSD since 21 July 2011, and required intensive medical management. The clinical neuropsychologist requested the applicant be excused from work because of a medical emergency.

**(2) AMHRR Listed:** MSE as described in previous paragraph 4j(1).

Memorandum, 4 November 2005, reflects the applicant was first seen by Mental Health on 12 July 2005, after the applicant redeployed from Afghanistan. Since the initial visit, there have been 29 documented contacts with Mental Health providers at the clinic. The applicant was seen by Womack Army Medical Center Emergency Department on two occasions. The applicant was diagnosed with depression and PTSD, but the diagnoses were changed to antisocial personality disorder because of the applicant's history of various symptoms. The symptoms also suggested an acute stress reaction related to deployment.

*The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Legal Brief; Chronological Record of Medical Care; Notification of Separation; five third party Sworn Statements; Report of Mental Status Evaluation; Womack Emergency Care and Treatment; SGT M. Affidavit; military service and civilian medical records; Transportation Cabinet letter; employee performance documents; and Office of Representative A. B. Digital Privacy Release Form.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant maintained employment and had excellent work ethics.

**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), 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 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-3, in effect at the time, states except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. The commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation if the GCMCA finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

**e.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

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

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

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

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

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

**(6)** Paragraph 14-12c prescribes 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.

**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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

**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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not

considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable.

The applicant contends the narrative reason for the discharge needs changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends suffering from severe combat-related PTSD and the condition affected behavior, which led to the discharge. The applicant provided medical documents, including the Report of Mental Status Evaluation, 3 October 2005, reflecting the applicant was diagnosed with PTSD and antisocial personality disorder, and had symptoms of acute stress reaction. Post-service medical documents reflect the applicant was diagnosed with PTSD; alcohol dependence; MDD, severe with psychotic features per history; antisocial personality disorder per history; exposure to combat zone, relationship with spouse and family; chronic psychiatric symptoms; and global assessment of functioning (GAF) scores of 20 and 45. The applicant provided third party statements from other Soldiers which described the applicant's change in behavior after returning from combat. The applicant's AMHRR contains the Report of Mental Status Evaluation (MSE) provided by the applicant, reflecting the applicant was diagnosed with PTSD and antisocial personality disorder. The provider recommended separation under AR 635-200, paragraph 5-13 or other administrative means deemed appropriate by the command. The MSE was considered by the separation authority.

The applicant contends good service, including two combat tours.

The applicant contends that AR 635-200, paragraph 5-13 applied to his case and required the referral of the applicant to the Army Physical Disability System pursuant to AR 635-40. Army Regulation 635-40, paragraph 4-3, in effect at the time, states except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. The commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation if the GCMCA finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

The applicant contends an upgrade of the discharge would allow veterans benefits. 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.

The applicant requests medical retirement. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends the VA rated the applicant 100 percent disabled for the PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends maintaining employment and having excellent work ethics. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

#### 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 determined, based on the Board Medical Advisor opine, that the applicant has the following potentially-mitigating diagnoses/experiences: Major Depression, PTSD, and, Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor opine, the applicant was diagnosed in service with Major Depression, PTSD, and Anxiety Disorder NOS, and the PTSD is service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the Board Medical Advisor opine, that the applicant's behavioral health conditions partially mitigate the discharge. The medical record shows that the applicant loaded a weapon while in the barracks of the FOB during a psychiatric emergency that led to the applicant to being evacuated from theater and psychiatrically hospitalized. The applicant's BH conditions contributed to this misconduct and it is mitigated. However, there is no natural sequela between Major Depression, PTSD, or Anxiety Disorder NOS and making threats to kill, shoot, or harm members of the applicant's command since none of these conditions have a nexus with perpetrating violence against others.

(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 available evidence did not support a conclusion that the applicant's Major Depression, Post Traumatic Stress Disorder, and Anxiety Disorder outweighed the applicant's medically unmitigated offenses of communicating threats.

b. Response to Contention(s):

(1) The applicant contends suffering from severe combat-related PTSD; the condition affected behavior, which led to the discharge; and the Department of Veterans Affairs rated the

applicant 100 percent disabled for the condition. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Major Depression, Post Traumatic Stress Disorder, and Anxiety Disorder outweighed the applicant's medically unmitigated offenses of communicating threats.

(2) The applicant contends the narrative reason for the discharge should be changed to Secretarial Authority. The Board considered this contention but found that the applicant's Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of communicating threats.

(3) The applicant contends good service, including two combat tours. The Board considered the applicant's two years of service, including combat tours in Iraq and Afghanistan, but determined that the applicant's record does not outweigh the applicant's medically unmitigated offenses of communicating threats.

(4) The applicant contends that AR 635-200, paragraph 5-13 applied to the applicant's case and required the referral of the applicant to the Army Physical Disability System pursuant to AR 635-40. The Board determined that the applicant's request for a medical discharge does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization

(5) The applicant contends other Soldiers with similar cases received a more lenient discharge. The Board considered this contention but found insufficient evidence to support the assertion that other Soldiers who threatened to kill and maim SNCOs received honorable discharges.

(6) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and 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.

(7) The applicant requests medical retirement. The Board determined that the applicant's request for a medical retirement does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(8) The applicant contends maintaining employment and having excellent work ethic. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the applicant's medically unmitigated offenses of communicating threats.

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 all available 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 to all evidence before the Board, the applicant's Major Depression, Post Traumatic Stress Disorder, and Anxiety Disorder did not outweigh the medically unmitigated offenses of communicating threats. The Board also considered the applicant's contentions regarding good service, unequal treatment compared to other Soldier who committed the same offenses, and post-service accomplishments but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000448

## 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:

1/27/2025

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

### Legend:

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

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

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

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