

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- 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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being released from active duty due to issues resulting from improperly treated illnesses. The applicant believes their entire service was honorable and several uncontrollable circumstances resulted in their discharge. The applicant claims their conduct, which resulted from chronic post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), led to their discharge. The applicant believes their symptoms were being ignored. The applicant and their family members made multiple attempts to bring their traumatic brain injury, suspected bipolar disorder, and PTSD to the attention of their superiors. When the applicant was charged with court-martial offenses, their rank, length of service, and type of service were not considered. It was determined by a psychiatrist the applicant was sane but suffered from PTSD, probable Axis I psychological disorder, traumatic brain injury, and alcoholism to cope with the effect of their issues. The applicant contends being offered a plea deal by the military prosecutor concerning their court-martial. The applicant was in distress and wanted to avoid any further conflict; they were scared and unsure of what was going on in their life and still had received no treatment.

b. **Board Type and Decision:** In a records review conducted on 4 February 2025, and by a 5-0 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 18 November 2011

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 14 July 2011, the applicant was charged with:

Charge I: Violating Article 86, UCMJ, for:

Specification 1: On or about 7 March 2011, without authority, absent oneself from their unit to wit: Headquarters and Headquarters Company, 59th Ordnance Brigade (Provisional), located at Redstone Arsenal, Alabama, and did remain so absent until on or about 9 March 2011.

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Specification 2: On or about 26 March 2011, without authority, absent oneself from their place of duty to wit: Bradford Health Services, located in Madison, Alabama, and did remain so absent until on or about 29 March 2011.

Specification 3: On or about 13 June 2011, without authority, fail to go at the prescribed time to their appointed place of duty, to wit: the Redstone Arsenal Bowling Alley parking lot, Redstone Arsenal, Alabama.

Specification 4: On or about 13 June 2011, without authority, fail to go at the prescribed time to their appointed place of duty, to wit: City Park in downtown Huntsville, Alabama.

Specification 5: On or about 14 June 2011, without authority, fail to go at the prescribed time to their appointed place of duty, to wit: Redstone Arsenal, Alabama Training Ammunition Supply Point at Redstone Arsenal, Alabama.

Charge II: Violating Article 91, UCMJ, for:

Specification 1: Having received a lawful order from Master Sergeant (MSG) A. F., a superior noncommissioned officer, then known by the applicant to be a superior noncommissioned officer, to report directly to Building 3305, Redstone Arsenal, Alabama to see MSG A. F., and Sergeant Major (SGM) D. F., an order which it was their duty to obey, did, at or near Redstone Arsenal, Alabama, on or about 9 March 2011, willfully disobey.

Specification 2: Having received a lawful order from First Sergeant (1SG) W. E., a superior noncommissioned officer, then known by the applicant to be a superior noncommissioned officer, to have no contact with A. S., or words to that effect, an order which it was their duty to obey, did, at or near Redstone Arsenal, Alabama, on divers occasions from 23 March 2011 to 4 May 2011, willfully disobey the same.

Charge III: Violating Article 121, UCMJ, for: The Specification: On or about 30 June 2011, steal six video games of a value of about \$319.70, the property of the Army and Air Force Exchange Service (AAFES).

Charge IV: Violating Article 123a, UCMJ, for: The Specification: On or about 21 March 2011, with intent to defraud and for the procurement of a thing of value, wrongfully and unlawfully utter to the Army and Air Force Exchange Services (AAFES), certain checks upon The National Banks of Central Texas a total of \$4,092.37.

Charge V: Violating Article 128, UCMJ, for: The Specification: On or about 1 February and 1 June 2011, unlawfully strike, choke, and drag A. S. on divers' occasions by punching them in the face with their fist, choking them with the applicant's hands around A. S., neck, and dragging them by their hair and body with the applicant's hands inside an apartment and downstairs.

Charge VI: Violating Article 134, UCMJ, for:

Specification 1: On divers' occasions, between on or about 9 March 2011 and on or about 21 March 2011, make and utter to the Army and Air Force Exchange Services (AAFES) certain checks, in words and figures and did thereafter dishonorably fail to maintain sufficient funds in the National Banks of Central Texas for payment of such checks in the full upon their presentment of payment.

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Specification 2: On or about 23 March 2011, wrongfully communicate to officer A. M. a threat they would get officer A. M., anyway they could and kill officer A. M., or words to that effect.

Specification 3: On or about 23 March 2011, resist being arrested by officer A. M., Huntsville Police Officer, a person authorized to arrest the accused which conduct was of a nature to bring discredit upon the Armed Forces and prejudicial to good order and discipline in the Armed Forces.

(2) Legal Consultation Date: 26 August 2011

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 17 November 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 December 2006 / Indefinite

b. Age at Enlistment / Education / GT Score: 28 / High School Graduate / 113

c. Highest Grade Achieved / MOS / Total Service: E-7 / 89B40, Ammunition Specialist / 15 years, 2 months

d. Prior Service / Characterizations: RA, 3 December 1997 – 27 September 1998 / HD
RA, 28 September 1998 – 19 July 2001 / HD
RA, 20 July 2001 – 2 March 2005 / HD
RA, 3 March 2005 – 24 December 2006 / HD

e. Overseas Service / Combat Service: Korea, SWA, Iraq (23 October 2006 – 11 January 2008); Kuwait (16 December 2000 – 18 April 2001)

f. Awards and Decorations: BSM, ARCOM-4, AAM-3, MUC, AGCM-4, NDSM-2, AFEM, GWOTSM, KDMS, ICM-2BSS, ASR, OSR-3, MOVSM

g. Performance Ratings: 1 September 2007 – 10 April 2010 / Among the Best
11 April 2010 – 10 April 2011 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

i. Lost Time / Mode of Return: AWOL for 7 days, 7 to 9 March 2011 and 26 to 29 March 2011. These periods are not annotated on the DD Form 214, block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: Bradford Health Services at Huntsville record, 30 March 2011, reflects Alcohol dependence; Nicotine dependence and posttraumatic stress disorder (PTSD).

United States Army Medical Department Activity Evaluation, 11 May 2011, reflects a diagnosis of Alcohol dependence; posttraumatic stress disorder; Adult Antisocial Behavior; Intimate Partner Relationship Problem.

Department of Veterans Affairs Rating Decision, 16 August 2018, reflects an evaluation of 100 percent for posttraumatic stress disorder with alcohol dependence and major depressive disorder.

(2) AMHRR Listed: Chronological Record of Medical Care, 10 May 2011, reflects a diagnosis of Alcohol dependence; Chronic post-traumatic stress disorder (PTSD) and Adult Antisocial Behavior.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those 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; two letters of support; VA Rating Decision; Department of Veterans Affairs statement in support of claim; two Veterans Affairs Decision letters; Neuropsychological Evaluation Report.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment from the VA for their mental health.

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 635-200 (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 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(7) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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: 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.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends their conduct, which resulted from chronic (PTSD) and traumatic brain injury, led to their discharge. The applicant contends it was determined by a psychiatrist the applicant was sane but suffered from PTSD, probable Axis I psychological disorder, traumatic brain injury, and alcoholism to cope with the effect of their issues. The applicant provided a Bradford Health Services at Huntsville Record, 30 March 2011, reflecting Alcohol dependence; Nicotine dependence and for posttraumatic stress disorder (PTSD). A United States Army

Medical Department Activity Evaluation, 11 May 2011, reflecting a diagnosis of Alcohol dependence; posttraumatic stress disorder; Adult Antisocial Behavior; Intimate Partner Relationship Problem. Also, a Department of Veterans Affairs Rating Decision, 16 August 2018, reflecting an evaluation of 100 percent for posttraumatic stress disorder with alcohol dependence and major depressive disorder. The AMHRR includes a Chronological Record of Medical Care, 10 May 2011, reflecting a diagnosis of Alcohol dependence; Chronic post-traumatic stress disorder (PTSD) and Adult Antisocial Behavior. The separation authority considered all medical documents.

The applicant contends along with their family members made multiple attempts to bring their traumatic brain injury, suspected bipolar disorder, and PTSD to the attention of their superiors. The applicant provided third party statements which reflect it was clear upon the applicant's second return from Iraq their thought patterns were not normal. The applicant showed signs of injuries and spoke about their concerns many times. The applicant stated on many occasions they could not hold a train of thought and could not sleep for days at the time. The applicant described the fears of having PTSD because of the visions of battle playing over and over in their mind. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including two combat tours. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends seeking help from the VA for their mental health. 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 reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD, Depressive Disorder, and mTBI.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 100 percent service connected for PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between PTSD and avoidant behavior the applicant's AWOL and FTRs are mitigated. The offenses of larceny, fraud, assault, resisting arrest, and violation of a no contact order are not mitigated by PTSD or Depressive Disorder as the misconduct is not natural sequela of either condition. The applicant's misconduct is also not mitigated by mTBI as the condition was not of a severity to impact judgement, cognition, or behavior at the time of the misconduct. While communicating a threat is typically mitigated by PTSD, given the nexus between PTSD and angry verbal outbursts, it is not in this case due to

the applicant's documented history of assaultive behavior.

(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 Post Traumatic Stress Disorder, Depressive Disorder, and/or Traumatic Brain Injury outweighed the medically unmitigated separating offenses of larceny, fraud, assault, resisting arrest, communicating a threat, and violation of a no contact order.

b. Response to Contention(s):

(1) The applicant contends their conduct, which resulted from chronic (PTSD) and traumatic brain injury, led to their discharge. The applicant contends It was determined by a psychiatrist the applicant was sane but suffered from PTSD, probable Axis I psychological disorder, traumatic brain injury, and alcoholism to cope with the effect of their issues. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury outweighed the medically unmitigated separating offenses of larceny, fraud, assault, resisting arrest, communicating a threat, and violation of a no contact order.

(2) The applicant they, along with family members, made multiple attempts to bring their traumatic brain injury, suspected bipolar disorder, and PTSD to the attention of their superiors. The Board considered this contention and found insufficient evidence in the current AMHRR or applicant-provided evidence to support the assertion that the applicant was not provided access to behavioral health resources.

(3) The applicant contends good service, including two combat tours. The Board considered the applicant's 15 years of service, including combat tours in Iraq and Kuwait, and determined that the applicant's record did not outweigh the medically unmitigated separating offenses of larceny, fraud, assault, resisting arrest, communicating a threat, and violation of a no contact order.

(4) The applicant contends seeking help from the VA for their mental health. The Board considered this contention and determined that it did not outweigh the medically unmitigated separating offenses of larceny, fraud, assault, resisting arrest, communicating a threat, and violation of a no contact order.

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

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 Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury did not outweigh the array of medically unmitigated separating offenses: larceny, fraud, assault, resisting arrest, communicating a threat, and violation of a no contact order. The Board also considered the applicant's contention regarding good service but found that the totality of the service 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

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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 Honorable characterization.

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

(3) The RE code will not change given the BH conditions. 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:

2/11/2025

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