

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, serving honorably for 16 years. The applicant served three tours in Iraq and has suffered tremendously with the loss of friends, injuries, and a huge toll on their family. The applicant contends the misconduct which led to their discharge was due to their 48-year-old neighbor soliciting their 16-year-old daughter on social media. The applicant states their actions were not the right thing to do but they have paid for this mistake by serving 45 days in jail, forfeiture of their pay for two months, reduction in rank, placed on probation, paying court fees, and receiving punishment under Article 15. The applicant enrolled in anger management classes and sought psychiatric help to better oneself. The applicant suffers from Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other in-service related medical conditions. The applicant further states they were going through the medical board process at the same time as the administrative separation process. The applicant needs their medical benefits and would like to have their retirement, and everything earned for their years of service. The applicant claims not to be a bad person and believed their family was threatened and by instinct they overreacted.

b. **Board Type and Decision:** In a records review conducted on 28 January 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:** Misconduct (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 14 June 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 August 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant's civilian conviction in the state of Georgia on 25 June 2012, for battery. On or about 6 September 2011, the applicant also stole a Play Station three Madden NFL video game from AAFES.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) Legal Consultation Date: 22 August 2012

(5) Administrative Separation Board: On 26 November 2012, the applicant was notified to appear before an administrative separation board and advised of rights.

On 22 August 2012, the applicant conditionally waived consideration of the case before an administrative separation board contingent upon being retained.

On 12 December 2012, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the reasons listed were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 30 May 2013, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 30 May 2013 / Under Other Than Honorable Conditions / The separation authority found the applicant's case did not warrant disability processing instead of further processing for administrative separation.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 December 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 30 / High School Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-6 / 11B3P 2B, Infantryman / 15 years, 11 months, 1 day

d. Prior Service / Characterizations: RA, 29 May 1997 – 2 November 1999 / HD
RA, 3 November 1999 – 3 March 2005 / HD
RA, 4 March 2005 – 7 December 2008 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Iraq (27 March 2003 – 10 February 2004; 26 November 2004 – 30 March 2005; 28 November 2005 – 5 November 2006)

f. Awards and Decorations: ICM-2CS, BSM, ARCOM-2, AAM-5, PUC, AGCM-4, NDSM, GWOTEM, GWOTSM, NCOPDR, ASR, OSR-3, CIB

g. Performance Ratings: 1 June 2008 – 28 February 2011 / Fully Capable
1 March 2011 – 23 September 2011 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 27 September 2007, reflects the applicant was apprehended for: larceny of AAFES property (on post).

FG Article 15, 2 November 2007, for on or about 27 September 2007, steal an Xbox 360, two controllers, and a Halo three game, of a value of about \$578.85, the property of AAFES. The punishment consisted of a reduction to E-5; forfeiture of \$1275 pay per month for two months and extra duty for 45 days.

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Military Police Report, 31 May 2011, reflects the applicant was apprehended for Civil arrest, aggravated battery (off post).

Military Police Report, 8 September 2011, reflects the applicant was apprehended for: Theft by deception (on post).

FG Article 15, 25 April 2012, for on or about 6 September 2011, steal a Play Station three Madden NFL 2012 of a value of \$500 or less, the property of AAFES. This in violation of Article 121, UCMJ. The punishment consisted of a reduction to E-5 (suspended); forfeiture of 1,506 and extra duty for 45 days and oral reprimand.

The applicant was charged with battery on 25 June of 2012, and entered a plea of guilty. The applicant was sentence to 180 days in jail; Alcohol counseling; Anger management and 50 feet away no contact directly or indirectly.

Three Developmental Counseling Forms, for shoplifting; conduct unbecoming and violation of Article 121 and 134.

i. Lost Time / Mode of Return: 45 days (CCA, 13 April 2012 – 9 August 2012) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Laurel Ridge Treatment Center Discharge Summary, 14 January 2012, reflects a diagnosis of post-traumatic stress disorder (PTSD).

Medical Evaluation Board Proceedings, 3 May 2013, reflect a diagnosis of post-concussion syndrome; traumatic brain injury; with post traumatic migraine.

(2) AMHRR Listed: Laurel Ridge Treatment Center Discharge Summary and Medical Evaluation Board Proceedings as described in previous paragraph 4j(1).

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; Memorandum, 30 May 2013; Memorandum for appeal; Memorandum for legal review; Memorandum for Impartial Review; Verbatim finding and recommendation; Report of Proceedings by Investigating Officer/Board of Officers; Summary of Proceeding; Memorandum for notification; Memorandum for separation; Memorandum for distribution; Medical Evaluation Board Proceedings; medical records; three NCO Evaluation Reports; Separation packet; Superior Court documents.

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), 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 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) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

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-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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

Army Regulation 635-200, in pertinent part, stipulates a Soldier may be separated when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. At the time of the applicant's discharge, the applicant had been confined by civilian authorities for 45 days, convicted of battery with physical harm and was sentenced to 1 year confinement; Drug and Alcohol counseling; Anger management and to stay away 50 feet away with no contact directly or indirectly.

The applicant contends suffering from Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other in-service related medical conditions. The applicant provided a Laurel Ridge Treatment Center Discharge Summary, 14 January 2012, reflecting a diagnosis of post-traumatic stress disorder (PTSD). A Medical Evaluation Board Proceedings, 3 May 2013, reflecting a diagnosis of post-concussion syndrome; traumatic brain injury; with post traumatic migraine. The AMHRR includes the Laurel Ridge Treatment Center Discharge Summary and Medical Evaluation Board Proceedings as described in previous paragraph 4j(1). All medical documents were considered by the separation authority.

The applicant contends going through the medical board process at the same time as the administrative separation process. The applicant provided a Medical Evaluation Board Proceedings, 3 May 2013, reflecting a diagnosis of post-concussion syndrome; traumatic brain injury; with post traumatic migraine. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record.

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

The applicant contends they want to be able to retire. The applicant's request for retirement 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 their family was threatened and by instinct they overreacted. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

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/experiences: PTSD, TBI, Depressive Disorder NOS, Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has BH conditions that potentially mitigates applicant's misconduct as outlined in the basis for separation. The applicant is 50 percent SC for PTSD and has additional potentially mitigating diagnoses of Depressive Disorder NOS, mTBI, and Adjustment Disorder subsumed by PTSD. However, the applicant's misconduct characterized by assault and battery and larceny are not mitigated by applicant's BH conditions as the misconduct is not natural sequela to PTSD, Depressive Disorder NOS, or Adjustment Disorder. Additionally, the applicant's diagnosis of mTBI was not of a severity to impact judgement, cognition, or behavior at the time of the misconduct.

(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 applicant's service connected for PTSD, Depressive Disorder, mTBI, and Adjustment Disorder and VA service connected PTSD and TBI did not outweigh the basis of separation: civilian conviction for battery and larceny as there is no natural sequela between the misconduct and the applicant's behavioral health conditions.

b. Response to Contention(s):

(1) The applicant contends suffering from Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other in-service related medical conditions. The Board considered this contention and determined the applicant is diagnosed with PTSD, TBI and other related medical conditions. However, the applicant's PTSD, TBI and other related medical conditions do not mitigate or excuse the applicant's larceny or assault and battery basis for separation. The applicant's discharge is proper and equitable.

(2) The applicant contends going through the medical board process at the same time as the administrative separation process. The Board considered this contention and determined the Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Whenever a member is being processed through the Physical

Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended.

(3) 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.

(4) The applicant contends good service, including three combat tours. The Board considered the applicant's 15 years of service, including three combat tours in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's civilian conviction for battery and larceny.

(5) The applicant contends wanting to be able to retire. The Board determined that the applicant's requested change to the DD Form 214 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 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(6) The applicant contends their family was threatened and by instinct they overreacted. The Board considered this contention and determined 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

c. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD, TBI, Depressive Disorder NOS, and Adjustment Disorder did not excuse or mitigate the offenses of civilian conviction for battery and larceny. 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, 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.

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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:

2/5/2025

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs