

**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, the discharge is inequitable because their post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) were ignored. An Article 15 was recommended, but the court martial convening authority overruled it, and the applicant was discharged with an under other than honorable conditions discharge.

**b. Board Type and Decision:** In a records review conducted on 5 December 2024, 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 7 May 2009

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 24 March 2009

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant assaulted a noncommissioned officer, Sergeant J. S., on or about 20 November 2008.

The applicant assaulted a noncommissioned officer, Sergeant A. K., on or about 20 November 2008.

The applicant did treat with contempt, Staff Sergeant A. K., on or about 20 November 2008.

The applicant was disrespectful in language towards Staff Sergeant A. K., on or about 20 November 2008.

The applicant was disrespectful in language towards Sergeant J. S., on or about 20 November 2008.

The applicant intentionally exposed in an indecent manner their private part, on or about 20 November 2008.

The applicant did conduct oneself in a nature to bring discredit upon the armed forces, on or about 20 November 2008, and on or about 2 August 2007.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions / The intermediate commander recommended a General (Under Honorable Conditions).

**(4) Legal Consultation Date:** 24 March 2009

**(5) Administrative Separation Board:** On 24 March 2009, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 29 April 2009 / Under Other Than Honorable Conditions

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 28 March 2006 / 5 years, 16 weeks

**b. Age at Enlistment / Education / GT Score:** 19 / GED / 108

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 1 month, 10 days

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

**e. Overseas Service / Combat Service:** SWA / Iraq (12 March 2007 – 21 May 2008)

**f. Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 6 August 2007, for wrongfully using cocaine (between 3 and 6 March 2007). The punishment consisted of a reduction to E-1; forfeiture of \$700 pay per month for two months; and extra duty and restriction for 45 days.

Commander's Report, 24 March 2009, reflects a Summary Court Martial, 27 March 2008, punishment imposed, reduction to private (E-2); Forfeiture of \$500 pay per month for one month; and restriction to home, work, place of worship, dining facilities, and medical facilities for two months.

Four Developmental Counseling Forms, for chapter 14-12b, disrespect, misconduct; wrongful use of a controlled substance and disobeying a lawful order.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Chronological Record of Medical Care, 18 February 2009, reflects the applicant verbalized understanding of the proceedings and agreed to continue with

examination. There were no psychiatric conditions noted on review of records and evaluation requiring disposition through medical channels. The applicant is and was mentally responsible, able to distinguish right from wrong and adhere to the right. The applicant was psychologically cleared for any administrative actions deemed appropriate by command.

*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.

**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)** Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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: 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.

**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 discharge is inequitable because their post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) were ignored. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Chronological record of medical care, 18 February 2009, reflecting the applicant verbalized understanding of the proceedings and agreed to continue with examination. There were no psychiatric conditions noted on review of records and evaluation requiring disposition through medical channels. The applicant is and was mentally responsible, able to distinguish right from wrong and adhere to the right. The applicant was psychologically cleared for any administrative actions deemed appropriate by command. All medical documents were considered by the separation authority.

The applicant contends an Article 15 was recommended, but the court martial authority overruled it, and the applicant was discharged with an under other than honorable conditions discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a recommendation from the company commander reflecting a recommendation of under other than honorable conditions discharge. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

#### **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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD. Additionally, the applicant asserts TBI, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant is diagnosed and service connected by the VA for PTSD. The applicant

self-asserts having a TBI due to blast exposures during military service, which is supported by the VA medical record.

**(3)** Does the condition or experience actually 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. There is a nexus between PTSD and difficulty with authority, so the applicant's PTSD mitigates disrespect and treating a Staff Sergeant with contempt. The applicant's assault offense is not mitigated by PTSD or TBI, as assault is not natural sequela of either of these conditions. The applicant intentionally exposing their private part is not mitigated by the PTSD or TBI given no natural sequela between these conditions and exposing oneself.

**(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 and asserted Traumatic Brain Injury outweighed the applicant's medically unmitigated offenses of assault of an NCO and indecent exposure.

**b. Response to Contention(s):**

**(1)** The applicant contends the discharge is inequitable because their PTSD and TBI were ignored. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and asserted Traumatic Brain Injury outweighed the applicant's medically unmitigated offenses of assault of an NCO and indecent exposure.

**(2)** The applicant contends an Article 15 was recommended, but the court martial convening authority overruled it, and the applicant was discharged with an under other than honorable conditions discharge. The Board considered this contention but found that the applicant voluntarily waived an administrative separation board. Additionally, the Board found that the applicant holds a general characterization of service. The Board found insufficient mitigating factors to warrant a change to the applicant's discharge.

**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 Post Traumatic Stress Disorder and asserted Traumatic Brain Injury did not outweigh the medically unmitigated offenses of assault of an NCO and indecent exposure. The Board also considered the applicant's contentions regarding being recommended for nonjudicial punishment rather than separation 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

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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.

## 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:

12/30/2024

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