

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 21 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 applicant was informed by Lieutenant Colonel S., the general (under honorable conditions) discharge would not affect the applicant's ability to receive veteran education benefits. The applicant was informed by a judge advocate general (JAG) attorney the applicant would likely be convicted and serve six years in prison despite having only circumstantial evidence. The attorney's personal or professional recommendation was to cut the applicant's losses and agree to the general (under honorable conditions) discharge. The applicant was accused of breaking and entering and grand larceny. After speaking to their attorney, the applicant decided it would be in their best interest to avoid a trial as the applicant would risk additional charges. Because the applicant was assured, they could use the GI Bill, it seemed to be a good decision. The applicant served in the Army Reserve and Army National Guard from 2003 to 2007 and did not receive any negative counseling statements or Article 15s. The applicant served in the Army from 2007 to 2011. The applicant deployed on three occasions to combat theaters. The applicant was a good Soldier and proud to serve the country. When accused of the offense, the applicant was receiving treatment for post-traumatic stress disorder (PTSD) and adjustment disorder related to combat. The applicant did not commit the crime they were accused of but was afraid they would be incarcerated for years, 6 years minimum and 15 years maximum. At the advice of the judge advocate officer and LTC S., the applicant believed it would be best to return to civilian life and pursue their education and treatment by the Department of Veterans Affairs (VA). The applicant has been in school since February 2012 and has not been involved in any criminal activity. The applicant attends church and lives with their grandparent, helping with household duties. The applicant is receiving behavioral health care, including treatment for traumatic brain injury (TBI), from the VA.

b. **Board Type and Decision:** In a records review conducted on 17 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:** Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 August 2011

c. **Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 30 June 2011

**(2) Basis for Separation:** The applicant was informed of the following reasons: On 2 December 2010, the applicant stole military property worth over \$5,000. The applicant missed accountability formation on divers occasions. The applicant disobeyed a lawful order from a noncommissioned officer (NCO).

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

**(4) Legal Consultation Date:** 6 July 2011

**(5) Administrative Separation Board:** On 6 July 2011, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 8 July 2011 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 3 December 2008 / 3 years, 10 weeks

**b. Age at Enlistment / Education / GT Score:** 22 / HS Graduate / 102

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 13B10, Cannon Crewmember / 8 years, 5 month, 23 days / However, the applicant's DD Form 214 reflects 8 years, 1 month, 6 days.

**d. Prior Service / Characterizations:** USAR, 19 February 2003 – 19 October 2006 / NA  
AD, 19 August 2004 – 8 October 2004 / HD  
(Concurrent Service)  
AD, 10 February 2005 – 23 May 2006 / NIF  
(Concurrent Service)  
ARNG, 20 October 2006 – 2 December 2008 / HD  
AD, 29 January 2007 – 16 July 2008 / HD  
(Concurrent Service)

**e. Overseas Service / Combat Service:** Alaska, SWA / Afghanistan (23 April 2005 – 26 April 2006, 5 May 2007 – 30 April 2008, 12 February 2009 – 12 February 2010)

**f. Awards and Decorations:** ARCOM, AAM, VUA, NDSM, ACM-2CS, GWOTSM, ASR, OSR-2, AFRM-MD, NATOMDL, CAB, ARCAM

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 7 February 2011, reflects the applicant was apprehended for: larceny of government property (not funds or weapons) - \$500 and over (on post). Investigation revealed the applicant stole items from a Soldier's vehicle and sold the items to an establishment, which was verified by an employee from the establishment.

Field Grade Article 15, 9 June 2011, for going from appointed place of duty (7 January and 18 and 25 March 2011); willfully disobeying a lawful order from Sergeant S., an NCO (6 January

2011); and stole military property of a value of about \$5,000 (2 December 2010). The form reflects the applicant demanded trial by court-martial; however, it appears the commander proceeded with the Article 15 hearing. The applicant was found guilty of all specifications. The form is void of the punishment imposed.

Election of Rights, 6 July 2011, reflects the applicant indicated they understood as a result of the issuance of a general (under honorable conditions) discharge, they may be ineligible for many or all benefits as a veteran under both federal and state laws. The applicant and their defense counsel signed the document.

Four Developmental Counseling Forms, for failing to be at the appointed place of duty on divers occasions; failing to obey a lawful order and regulation; lacking accountability over the past weeks; failing to uphold the standard while living in the barrack; lying to an NCO; and leaving formation without authority.

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

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

(1) **Applicant provided:** Chronological Record of Medical Care, from 30 March 2010 to 27 June 2011, reflecting the applicant's chronic medical conditions, including PTSD; adjustment disorder; atypical dyssomnia; phase of life or life circumstance problem; primary insomnia; sensorineural hearing loss; tinnitus; and circadian rhythm sleep disorder. The applicant reported receiving an Article 15 and the punishment consisted of reduction, forfeiture, and extra duty for 45 days.

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation, 6 May 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with PTSD.

*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; and Chronological Record of Medical Care.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant attends college and church, has not been involved in any criminal activity, assists their grandparent with household duties, and is receiving mental health care from the VA.

**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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(6) 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.

(7) 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.

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 "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).

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

The applicant contends suffering from PTSD, adjustment disorder, and TBI. The applicant provided medical documents reflecting the applicant's chronic medical conditions, including PTSD; adjustment disorder; atypical dyssomnia; phase of life or life circumstance problem; primary insomnia; sensorineural hearing loss; tinnitus; and circadian rhythm sleep disorder. The applicant's AMHRR shows the applicant underwent a behavioral health evaluation (BHE) on 6 May 2011, which indicates the applicant was mentally responsible. The applicant was diagnosed with PTSD. The BHE was considered by the separation authority.

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 being not guilty of the offenses, but accepted the adverse actions because of the possible sentence, if found guilty, and was informed the discharge would not impact their GI Bill benefits. The applicant's AMHRR reflects the applicant consulted with a defense attorney, read their rights, and indicated the applicant understood as a result of the issuance of a general (under honorable conditions) discharge, the applicant may be ineligible for many or all benefits as a veteran under both federal and state laws. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends attending college and church, not being involved in any criminal activity, assisting their grandparent with household duties, and receiving mental health care from the VA. 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.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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.

## **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, mTBI.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD and 10 percent SC for mTBI

(3) Does the condition or experience actually excuse or mitigate the discharge?

**Partially.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has a BH condition that partially mitigates the misconduct as outlined in the basis for separation. The applicant is 70 percent SC for PTSD and has additional diagnoses of Adjustment Disorder that is subsumed by PTSD, and history of mTBI for which the applicant is 10 percent SC. Given the nexus between PTSD and avoidance, and PTSD and problems with authority, applicant's misconduct characterized by missing accountability formations, and failing to clean living quarters as ordered is mitigated by PTSD. However, applicant's misconduct characterized by larceny is not mitigated as the misconduct is not natural sequela of PTSD. The misconduct is also not mitigated by the applicant mTBI diagnosis as the condition 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.** 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 PTSD and mTBI outweighed the remaining unmitigated misconduct – larceny.

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

(1) The applicant contends suffering from PTSD, adjustment disorder, and TBI. The Board considered this contention and determined the applicant is diagnosed with PTSD, Adjustment Disorder and mTBI. However, the applicant's conditions do not mitigate or outweigh the applicant's larceny basis for separation and is not sufficient to warrant an Honorable discharge.

(2) The applicant contends good service, including three combat tours. The Board considered the applicant's 8 years of service, including 3 combat tours in Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's larceny, FTRs, and disobeying a lawful order.

(3) The applicant contends attending college and church, not being involved in any criminal activity, assisting their grandparent with household duties, and receiving mental health care from the VA. The Board considered this contention and determined that the applicant's attending college and church, not being involved in any criminal activity, assisting their grandparent with household duties, and receiving mental health care from the VA do not outweigh the misconduct based on the seriousness of the applicant's offense of larceny, FTRs, and disobeying a lawful order.

(4) The applicant contends being informed the discharge would not impact their GI Bill benefits and an upgrade would allow educational benefits through the GI Bill. 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.

**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, Adjustment Disorder, mTBI did not excuse or mitigate the offenses of larceny. The Board also considered the applicant's contention regarding false accusations and the applicant's behavioral health condition and found that totality of the applicant's record does not warrant a discharge upgrade. 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.

**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:**

3/13/2025

**X**

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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