

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 discharged because of a pattern of misconduct. The applicant's offense was underage drinking, which took place after the applicant was injured in Afghanistan and medically evacuated back to the states. The applicant did not receive any help with their drinking, nor was any offered. The applicant was an exceptional Soldier, receiving an Army Achievement Medal for saving an accident victim's life, completing Air Assault School, and experiencing combat in Afghanistan. The applicant has been rated 100 percent service-connected disability for a physical condition and post-traumatic stress disorder (PTSD). The applicant believes their alcohol use was because of their medical conditions, but instead of receiving help for their abuse, the applicant was given administrative action. The applicant was less than two months from completing their tour. The applicant was 20 years old at the time of these offenses. The applicant is 26 years old and believes their service was honorable until their underage actions. Since their discharge, the applicant has obtained two bachelor's degrees, despite their disability. The applicant sought counseling about their past stressors and believes they have come a long way since their discharge. The applicant is married with two children and wants to be seen as an honorable Soldier. The issues which occurred were because of internal issues resulting from the deployment.

b. **Board Type and Decision:** In a records review conducted on 3 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 details 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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 8 December 2006

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 October 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons:

The applicant failed to report to their place of duty on multiple occasions;

The applicant violated regulations pertaining to wrongful possession of alcohol by a minor;

The applicant wrongfully wore the rank of a commissioned officer and the ranger tab without authorization;

The applicant disobeyed orders given by the command;

The applicant violated policy pertaining to visitors in the barracks; and

These types of actions showed a lack of good order and discipline and was not tolerated by the unit.

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

(4) Legal Consultation Date: 26 October 2006

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 1 December 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 February 2004 / 3 years

b. Age at Enlistment / Education / GT Score: 17 / GED / NIF

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10, Infantryman / 2 years, 9 months, 27 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (2 February 2006 – 1 July 2006)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR, OSR, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Report of Mental Status Evaluation, 5 May 2006, 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 diagnoses were deferred for Axis I and Axis II, and Axis III was noncontributory. The applicant was invited to follow up with combat stress control services, as needed, until separation was finalized.

Report of Medical History, 15 May 2006, the applicant reported various injuries, including being knocked unconscious when their vehicle was hit by a rocket propelled grenade (RPG); and sleeping issues. The examining medical physician noted in the comments section: No current concerns.

Field Grade Article 15, 12 September 2006, for on 21 August 2006, violating a lawful general order or regulation by wrongfully having a visitor in their room after visitation hours, wrongfully

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possessing alcohol in their room while under the age of 21, and possessing a BB Gun in their barracks room. The punishment consisted of forfeiture of \$636 (suspended); and extra duty for 45 days.

Record of Trial by Summary Court-Martial reflects the applicant was tried on 8 November 2006. The applicant was charged with five specifications. The summary of offenses, pleas, and findings:

Violation of Article 86, Absence without leave: On 23 September 2006, without authority, fail to go to place of duty; guilty consistent with the plea.

Violation of Article 92, Disobey order or regulation:

On 23 September 2006, violate a lawful regulation by having a visitor in their barracks room without signing the visitor in; guilty consistent with the plea; and

On 23 September 2006, violate a lawful regulation by possessing alcohol in their barracks room while under the age of 21; guilty, consistent with the plea.

Violation of Article 134, Wearing unauthorized insignia, decoration, badge, ribbon, device, of lapel button:

On 13 October 2006, wrongfully impersonate a commissioned officer by publicly wearing the rank of captain; guilty, consistent with the plea; and

On 13 October 2006, without authority wear a Ranger tab; guilty, consistent with the plea.

Sentence: Forfeiture \$636 pay and confinement for 30 days. On 8 November 2006, the sentence was approved and ordered executed.

The applicant's Enlisted Record Brief (ERB), 8 December 2006, reflects the applicant was ineligible for reenlistment because of Other; prohibitions not otherwise identified (9X). The applicant was reduced from E-3 to E-1, effective 21 November 2005. The applicant's expiration term of service (ETS) was 27 May 2007.

Numerous Developmental Counseling Forms, for wearing the CIB without authorization; impersonating an officer; possessing alcohol while under age; having a person of the opposite sex in the room; failing to report to extra duty; room being insecure; having marital issues; committing adultery; disobeying a lawful order (no contact) from the company commander; being investigated for basic housing allowance fraud; being late for extra duty; lying to a noncommissioned officer; having financial issues; and wrongfully possessing government equipment.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

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: The applicant obtained two bachelor's degrees, sought counseling, and has come a long way.

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 waivable and nonwaivable 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.

The applicant contends PTSD and an injury affected behavior which led to the discharge, and the applicant was rated 100 percent service-connected for PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition, or the applicant was rated 100 percent disabled for PTSD. The applicant's AMHRR reflects the applicant underwent a mental status evaluation (MSE) on 5 May 2006, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The diagnoses were deferred for Axis I and Axis II, and Axis III was noncontributory. The applicant was invited to follow up with combat stress control services, as needed, until separation was finalized. The MSE did not indicate a diagnosis. The MSE was considered by the separation authority.

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

The applicant contends being discharged less than two months before completing their tour. The applicant's AMHRR reflects the applicant enlisted on 2 February 2004 for 3 years. The applicant was involuntarily discharged on 8 December 2006. The applicant's ERB reflects their ETS date was 27 May 2007. There is no evidence the applicant extended their enlistment.

The applicant contends not receiving any help with their drinking issue. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends obtaining two bachelor's degrees, seeking counseling, and coming a long way. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD, MDD, Post-Concussion Syndrome, 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. The applicant is 100 percent service connected for PTSD and has additional diagnoses of MDD, Post-concussive Syndrome, mTBI, and Adjustment Disorder that are subsumed by PTSD, and Mood Disorder due to General Medical Condition that is subsumed by MDD. Given the nexus between PTSD and the use of substances, the applicant's wrongful possession of alcohol is mitigated. However, wrongful possession of a BB gun in the barracks, wrongfully having a visitor in a barracks room, impersonating an Officer, and wrongfully wearing a ranger tab are not mitigated by PTSD or MDD as this behavior is not natural sequela of the diagnosed conditions. The misconduct is also not mitigated by the diagnosis of Post-concussive Syndrome or mTBI as neither condition was of a severity to impact judgement, cognition, or behavior at the time of the misconduct. Further, records reflect the applicant made an informed decision with willful intent to wear officer rank and a ranger tab to court in hopes of receiving leniency during sentencing.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, and Traumatic Brain Injury outweighed the medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks.

b. Response to Contention(s):

(1) The applicant contends PTSD and an injury affected behavior which led to the discharge, and the applicant was rated 100 percent service connected for PTSD. 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, Major Depressive Disorder, and Traumatic Brain Injury outweighed the applicant's medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks.

(2) The applicant contends good service, including a combat tour. The Board considered the applicant's two years of service, including a combat tour in Afghanistan, and found that the applicant's record does not outweigh the medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks.

(3) The applicant contends being discharged less than two months before completing their tour. The Board considered this contention and found it non-persuasive given the applicant's multiple unmitigated offenses.

(4) The applicant contends not receiving any help with a drinking issue. The Board considered this contention and found insufficient evidence to show that the applicant was not provided sufficient access to behavioral health or substance abuse treatment services.

(5) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention and determined that the applicant's youth and immaturity did not outweigh the medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks. Additionally, the applicant met minimum age requirements to enter military service.

(6) The applicant contends obtaining two bachelor's degrees, seeking counseling, and coming a long way. The Board considered the applicant's post-service accomplishments and determined that they do not outweigh the totality and severity of the medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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, Major Depressive Disorder, and Traumatic Brain Injury did not outweigh the medically unmitigated offenses of wrongfully wearing a ranger tab and officer rank, wrongfully having a visitor in a barracks room, and wrongful possession of a BB gun in the barracks. The Board also considered the applicant's contentions regarding good service, immaturity, and post-service accomplishments and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

(3) The RE code will not change due to the behavioral health 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:

12/23/2024

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