

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, was suffering from chronic PTSD, TBI and Depression. The applicant is 50 percent service-connected through the VA and is actively seeking help. After the last deployment, they were just unable to cope with what they went through, and their actions reflected as such.

b. **Board Type and Decision:** In a records review conducted on 21 November 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, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 29 February 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 17 January 2012

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

On or about 19 April 2011, the applicant failed to obey a lawful general regulation, USARAK Regulation 190-1, paragraph w(2), by not registering their weapons on post;

Between on or about 1 October 2011 and on or about 30 November 2011, the applicant failed to obey a lawful general regulation, Policy Memorandum-1, Discipline, Law, and Order, paragraph 4(p)(2), dated 15 July 2009, by distributing alcohol to a minor;

Between on or about 1 August 2010 to on or about 31 August 2010, wrongfully distributed a controlled substance; and,

On multiple occasions between 1 July 2010 and 30 November 2010, maltreated Soldiers who were subject to the applicant's order.

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

(4) Legal Consultation Date: 31 January 2012

(5) Administrative Separation Board: On 31 January 2012, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 14 February 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 March 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 25 / High School Letter / 108

c. Highest Grade Achieved / MOS / Total Service: E-7 / 35L40, Counterintelligence Agent / 12 years, 3 days

d. Prior Service / Characterizations: USAR, 26 February 2000 – 9 July 2002 / HD
RA, 10 July 2002 – 27 October 2005 / HD
RA, 28 October 2005 – 2 March 2008 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Iraq (28 September 2007 – 7 November 2008); Kuwait (28 December 2004 – 12 December 2005)

f. Awards and Decorations: BSM, ARCOM-3, AAM, AGCM-2, NDSM, GWOTEM, GWOTSM, ICM-CS, NCOPDR-2, ASR, OSR-3, ARCOTR, CAB

g. Performance Ratings: 1 August 2007 – 28 February 2010 / Among the Best
1 March 2010 – 28 February 2011 / Marginal
1 March 2011 – 21 April 2011 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Report of Proceedings by Investigating Officer, 25 and 29 April 2011, reflects the investigating officer found: The applicant and PFC A. G. planned an April Fool's joke which was played on PFC S; provided alcohol to PFC S., and had three unregistered firearms on post; a CID investigation into allegations the applicant shared prescription drugs with ARO Soldiers was ongoing. Additional Findings: Pattern of alcohol abuse; alcohol to minors; improper rank; government travel card; unregistered firearms. Recommendations: The applicant should be given a Field Grade Article 15 and a Relief for Cause NCOER for their role in the April Fool's practical joke; CID investigation was still pending for the prescription medication; the applicant should receive a Relief for Cause NCOER and Field Grade Article 15 for maltreatment their subordinates; the applicant should be given a Relief for Cause NCOER for their lack of leadership and their treatment of ARO Soldiers. Additional Findings Recommendations: The applicant has been command referred to ASAP and must continue treatment in ASAP and receive a psychiatric evaluation in order to determine whether the alcohol abuse was part of a larger psychological problem; the applicant should receive a Field Grade Article 15 and Relief for Cause NCOER for providing alcohol to PFC S.; the applicant should receive a Field Grade Article 15 and Relief for Cause NCOER for fraudulent charges made to the Government Travel Card; and, the applicant should receive a

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Field Grade Article 15 and Relief for Cause NCOER for being in possession of unregistered firearms on post.

Department of the Army, Polygraph Examination Report, 10 May 2011, investigation revealed PFC C. L. S., disclosed to the chain of command sometime in August 2010, the applicant provided them several pills, while at the on-post residence, to include prescribed Zoloft and the sleep aid medication Lunesta. PFC C. L. S. stated the following day they had a negative reaction to the medications and was taken to the Troop Medical Clinic (TMC), JBER. PFC C. L. S. stated they did not disclose to the medical personnel at the TMC what they consumed the night prior, due to the fear of being kicked out of the Army.

CID Report of Investigation – Final – 0057-2011-CID009-46855-5L5B/5L5C/5L5D2/9GI, 29 June 2011, investigation established probable cause to believe the applicant committed the offense of wrongful distribution of a controlled substance, and PFC S. committed the offense of wrongful use and possession of a controlled substance when PFC S. wrongfully ingested prescription medication provided to them by the applicant.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Rating Decision, 16 November 2012, reflects the applicant was granted 30 percent service-connected disability for PTSD with insomnia.

Adult Disability Report, undated, reflects the applicant was diagnosed with chronic PTSD, Insomnia, chronic depression, chronic migraine headaches, and chronic mood disorder.

(2) AMHRR Listed: Report of Medical History, 17 November 2011, the examining medical physician noted chronic PTSD – see BH currently on meds. Will continue BH. Going to San Antonio for a course. Recently psych hospitalization – released without concerns at the time. Also goes to ASAP in the comments section.

Report of Medical Examination, 18 November 2011, the examining medical physician noted PTSD, depression in the comments section.

Report of Mental Status Evaluation (MSE), 21 November 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with Axis I: Alcohol use disorder, Anxiety disorder.

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: Online application and listed enclosures 1 through 6.

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 14-12c 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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

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

The applicant contends suffering from chronic PTSD, TBI and depression. The applicant was granted 50 percent service-connected disability through the VA and is seeking help. After the last deployment, they were unable to cope. The applicant provided a VA Rating Decision, 16 November 2012, which reflects the applicant was granted 30 percent service-connected disability for PTSD with insomnia. A Adult Disability Report, undated, reflects the applicant was diagnosed with chronic PTSD, Insomnia, chronic depression, chronic migraine headaches, and chronic mood disorder. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 21 November 2011, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with Axis I: Alcohol use disorder, Anxiety disorder. Report of Medical History, 17 November 2011, the examining medical physician noted chronic PTSD – see BH currently on meds. Will continue BH. Going to San Antonio for a course. Recently psych hospitalization – released without concerns at the time. Also goes to ASAP in the comments section. A Report of Medical Examination, 18 November 2011, the examining medical physician noted PTSD, depression in the comments section The MSE, Report of Medical History, and Report of Medical Examination were considered by the separation authority.

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, Depression, Anxiety Disorder. 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 was diagnosed in service with PTSD, Depression, and Anxiety Disorder, and the VA has service connected the PTSD. The applicant also self-asserts experiencing a TBI during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. There is no natural sequela between PTSD, Depression, or Anxiety Disorder, and not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, or maltreating soldiers since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant also self-asserts TBI, but there is no medical evidence to support the asserted TBI. In addition, a TBI does not have a natural sequela with any of the misconduct that led to the separation, and it would not provide any mitigation even if there was medical evidence to support the asserted condition. Accordingly, none of the applicant's BH conditions provide any mitigation for the basis of separation.

(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, Depression, or Anxiety Disorder outweighed the applicant's medically unmitigated offenses of not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, or maltreatment of Soldiers.

b. Response to Contention(s):

(1) The applicant contends suffering from chronic PTSD, TBI and Depression. The applicant was granted 50 percent service-connected disability through the VA and is seeking help. After the last deployment, they were unable to cope with what they went through. The Board liberally considered this contention and determined that the available evidence, including VA service connection, did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Depression, or Anxiety Disorder outweighed the applicant's medically unmitigated offenses of not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, and maltreatment of Soldiers.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that the applicant's Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, and maltreatment of Soldiers.

(3) The applicant contends good service, including two combat tours. The Board considered the applicant's twelve years of service, including combat tours in Iraq and Kuwait, but determined that the totality of the service record does not outweigh the severity of the separating and medically unmitigated offenses of not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, and maltreatment of Soldiers.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant is strongly encouraged to request a personal appearance hearing to address the issues and/or provide further details before a Board. The applicant is responsible for satisfying the burden of proof and providing

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documents or other evidence sufficient to support the 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, Depression, or Anxiety Disorder did not outweigh the medically unmitigated offenses of not registering weapons on post, distributing alcohol to a minor, distributing a controlled substance, or maltreatment of Soldiers. The Board also considered the applicant's contention regarding good service and noted evidence reflecting quality service. However, the totality of the current evidentiary record does not warrant a discharge upgrade; a personal appearance is recommended. 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 Honorable characterization.

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

(3) The RE code will not change due to the service connected BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

Authenticating Official:

11/21/2024

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

