

**1. Applicant's Name:** [REDACTED]**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 the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable and a narrative reason change.

The applicant seeks relief contending, in effect, trying to learn to cope with post-traumatic stress disorder (PTSD). The actions which led to their court martial were during a downward spiral which almost ended in death. The applicant struggles daily after leaving the military. The applicant claims going through a medical board prior to their discharge and receiving little help from the doctors. The applicant almost lost their spouse because of the PTSD and desires help from the VA.

**b. Board Type and Decision:** In a records review conducted on 21 November 2024, and by a 3-2 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, and medical mitigation of the applicant's illegal substance abuse offenses. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

*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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 3 May 2013**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 26 February 2013, the applicant was charged with:

Charge I: Violating Article 112a, UCMJ:

Specification 1: On or about 1 November 2012, wrongfully possess Alprazolam, a Schedule IV controlled substance.

Specification 2: On or about 1 November 2012, wrongfully possess Zolpidem, a Schedule IV controlled substance.

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Specification 3: On or about 1 November 2012, wrongfully use Alprazolam, a Schedule IV controlled substance.

Charge II: Violating Article 129, UCMJ:

Specification 1: On or about 1 November 2012, in the nighttime, unlawfully break and enter the dwelling house of SPC V. P., with intent to commit larceny therein.

Specification 2: On or about 2 November 2012, in the nighttime, unlawfully break and enter the dwelling house of SPC V. P. with intent to commit larceny therein.

Charge III: Violating Article 121, UCMJ, The Specification: On or about 1 November 2012, steal Alprazolam, Zolpidem, Divalproex, an iPod, a stereo- speaker, a watch, and a knife, items of a value of over \$500, the property of SPC V. P.

**(2) Legal Consultation Date:** 8 April 2013

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

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

**(5) Separation Decision Date / Characterization:** 22 April 2013 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 4 December 2010 / 2 years, 5 months

**b. Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 12N10, Horizontal Construction Specialist / 4years, 4 months, 16 days

**d. Prior Service / Characterizations:** ARNG, 18 December 2008 – 29 June 2009 / NA  
IADT, 1 July 2009 – 11 December 2009 / HD  
ARNG, 12 December 2009 – 3 December 2010 / NA

**e. Overseas Service / Combat Service:** SWA / Afghanistan (4 December 2010 – 2 July 2011)

**f. Awards and Decorations:** ACM-CS, ARCOM, NDSM, GWOTSM, ASR, OSR, AFRMMD, CAB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

Military Police Report, 6 December 2011, reflects the applicant was apprehended for: Fleeing the scene of a traffic accident; Drunken Driving, Driving under the influence of alcohol) (on post).

FG Article 15, 22 March 2012, for on or about 6 December 2011, physically control a vehicle while drunk. On or about 6 December 2011, wrongfully leave the scene of the accident without providing assistance to Private D. M., who had been struck and injured by the said vehicle. On or about 6 December 2011, wrongfully leave the scene of the accident without providing assistance to Private C. T., who had been struck. The punishment consisted of a reduction to E-3; forfeiture of \$990 (suspended).

Developmental Counseling Forms, for fleeing the scene of an accident and Driving Under Influence (DUI).

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

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

(1) **Applicant provided:** Department of Veterans Affairs Disability Evaluation System Proposed Rating, 31 May 2013, reflects a combined rating of 70 percent and a diagnosis of post-traumatic stress disorder.

(2) **AMHRR Listed:** The Integrated Disability Evaluation System Narrative Summary, 13 August 2012, reflects a diagnosis of post-traumatic stress 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:** Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Disability Evaluation System Proposed Rating.

**6. POST SERVICE ACCOMPLISHMENTS:** None were 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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

f. 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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

g. 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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." 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 suffering from PTSD. The applicant provided a Department of Veterans Affairs Disability Evaluation System Proposed Rating reflecting a combined rating of 70 percent and a diagnosis of post-traumatic stress disorder. The AMHRR includes an Integrated Disability Evaluation System Narrative Summary, 13 August 2012, reflecting a diagnosis of post-traumatic stress disorder. The Narrative Summary was considered by the separation authority.

The applicant contends a medical evaluation board was under process at the time of the separation proceedings. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

## **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, Major Depression, Anxiety Disorder NOS.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with PTSD, Major Depression, and Anxiety Disorder NOS and the VA has service connected the 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. Given the nexus between PTSD, Major Depression, Anxiety Disorder NOS, and self-medicating with substances, wrongfully possessing and using controlled substances are mitigated. However, neither PTSD, Major Depression, or Anxiety Disorder NOS mitigate breaking and entering with the intent to commit larceny or stealing someone else's property since these are pre-meditated, deliberate anti-social acts for personal gain that have no natural sequela with PTSD, Major Depression, or Anxiety Disorder NOS.

(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, Major Depression, and Anxiety Disorder outweighed the applicant's medically unmitigated offenses of theft and breaking and entering with the intent to commit larceny.

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

(1) The applicant contends suffering from PTSD. 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, Major Depression, and Anxiety Disorder outweighed the applicant's medically unmitigated offenses of theft and breaking and entering with the intent to commit larceny. However, the Board found that the applicant's service record partially outweighed the medically unmitigated misconduct. Therefore, a discharge upgrade is warranted.

(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 In Lieu of Trial by Court-Martial narrative reason for separation is proper and equitable.

(3) The applicant contends a medical evaluation board was under process at the time of the separation proceedings. The Board considered this contention and found that the pausing of a medical evaluation board in favor of administrative separation for misconduct is a decision within the separation authority's discretion per AR 635-200.

(4) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

**c.** The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, and medical mitigation of the applicant's illegal substance abuse offenses. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the

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narrative reason/SPD code and RE code were proper and equitable and voted not to change them. However, the applicant may request a personal appearance hearing to address further issues before a 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 to change the applicant's characterization of service to General because the applicant's record of service and behavioral health conditions (Post Traumatic Stress Disorder, Major Depression, and Anxiety Disorder) outweighed the applicant's illegal substance abuse offenses. The Board found that a General discharge is proper and equitable as the applicant's medically unmitigated theft and breaking and entering with the intent to commit larceny offenses, even with mitigation offered by the applicant's service record, fell below that level of meritorious service warranted for an upgrade an Honorable characterization.

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

(3) The RE code will not change due to the BH diagnoses. 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: Yes
- b. Change Characterization to: General
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

11/27/2024

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs